Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,
Petitioner,

v.

WILLARD WEEMS and JULIA WEEMS,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of Alabama

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PETITION FOR WRIT OF CERTIORARI

JOHN E. NOLAN
Counsel of Record
PAUL J. ONDRASIK, JR.
SARA E. HAUPTFUEHRER
STEPTOE & JOHNSON
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for Jefferson-Pilot Life Insurance Company, Inc.

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QUESTIONS PRESENTED

1. Whether state courts lack jurisdiction over claims brought under the Employee Retirement Income Security Act of 1974 ("ERISA") for breach of fiduciary duty and interference with ERISA-protected rights.

2. Whether the courts are precluded from awarding compensatory and punitive damages in connection with ERISA claims for breach of fiduciary duty and interference with ERISA-protected rights.

3. Whether there is a right to trial by jury of ERISA claims for breach of fiduciary duty and interference with ERISA-protected rights.

PARTIES TO THE PROCEEDING BELOW

Plaintiffs

Willard Weems
Julia Weems

Defendants

Jefferson-Pilot Life Insurance Company, Inc.
A.C. Johnson Trucking Company
A.C. Johnson

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.1, Petitioner Jefferson-Pilot Life Insurance Company, Inc. discloses that it is a corporation, that it is wholly-owned by Jefferson-Pilot Corporation, and that it has no subsidiaries other than wholly owned subsidiaries.

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OPINION BELOW

The opinion of the Supreme Court of Alabama is not yet reported. It is reproduced in the appendices to this petition ("Pet. App.") at pages 1a-20a. The Clerk's notice overruling Petitioner's application for rehearing is reproduced at Pet. App. 21a. The unpublished order of the Circuit Court of Lauderdale County, Alabama, appears at Pet. App. 22a-23a.

JURISDICTION

The judgment below was entered on May 5, 1995, and Petitioner's timely application for rehearing was denied on June 16, 1995. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

This case involves §§ 409, 502(a) and (e), and 510 of the Employee Retirement Income Security Act of 1974

("ERISA"), 29 U.S.C. §§ 1109, 1132(a), (e), 1140, which are reproduced at Pet. App. 24a-27a.

STATEMENT OF THE CASE

This is an action under ERISA for alleged breach of fiduciary duty and interference with a participant's ERISA rights. In it, the Supreme Court of Alabama determined that:

- The state trial court had jurisdiction to decide these ERISA claims;
- Under ERISA, Respondents may be entitled to compensatory and punitive damages; and
- Under ERISA, Respondents also have the right to have their claims tried by a jury "because the right to recover compensatory and punitive damages 'leads inexorably to the right of trial by jury.'"

Each of these conclusions is patently wrong. Each is in direct conflict with either the plain language of the statute or the decisions of this Court, the United States Court of Appeals for the Eleventh Circuit, and other Courts of Appeals as well.

Certiorari should be granted and this case should be summarily reversed. In the alternative, this case should be heard with *Varity Corp. v. Howe*, No. 94-1471, *certiorari* granted April 24, 1995, or held and disposed of in light of this Court's decision in that case.

A. Facts

Respondent Willard Weems was a participant in a welfare benefit plan maintained by his employer A.C. Johnson Trucking Company ("Johnson Trucking"). Respondent Julia Weems, Mr. Weems's wife, was also covered by the plan. Plan benefits were provided through an insurance policy issued by Petitioner Jefferson-Pilot Life Ins. Co. ("Jefferson Pilot") to Johnson Trucking. In July 1990, Jefferson Pilot canceled the policy effective

April 30, 1990 because Johnson Trucking had not paid any premiums since February. On two prior occasions, Johnson Trucking had been delinquent in the payment of premiums to Jefferson Pilot, but the policy was not canceled as these delinquencies were later cured. Jefferson Pilot provided Johnson Trucking prior notice of the cancellation, but Johnson Trucking did not inform its employees that coverage had lapsed until August 1, 1990. Jefferson Pilot maintains that all of its actions were well within its rights under the policy.

On June 5, 1990, Mr. Weems was hospitalized with a heart attack. Initially, Jefferson Pilot paid Mr. Weems's medical expenses. However, such payments stopped upon cancellation of the policy, and Jefferson Pilot obtained reimbursement from Mr. Weems's medical providers for amounts previously paid. Mr. Weems resigned from Johnson Trucking effective August 17, 1990. He asserts that since that time he has been unable to obtain medical insurance for his heart condition.

B. Proceedings Below

On January 4, 1991, the Weemses filed suit in state court against Johnson Trucking and related entities alleging state law claims. Jefferson Pilot was added as a party defendant by amended complaint filed on April 16, 1991, Johnson Trucking having ceased operations.[1] Ultimately, the complaint asserted several state law claims, as well as claims for "tortious" breach of fiduciary duty under ERISA. The amended ERISA claims expressly invoked §§ 409, 502(a)(3), and 502(a)(1)(B) of ERISA, 29 U.S.C. §§ 1109, 1132(a)(3), 1132(a)(1)(B). *E.g.*, R. 71. The amended complaint sought compensatory

[1] Upon being served with the amended complaint, Jefferson Pilot removed the action to the United States District Court for the Northern District of Alabama on the grounds that the plaintiffs' claims arose under ERISA. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). The district court remanded to the Alabama state court, having concluded that removal was untimely.

damages for medical expenses, lost wages, emotional distress, and interference with Mr. Weems's right to receive plan benefits, punitive damages, interest, and attorneys' fees. The plaintiffs demanded trial by jury.

After conducting discovery, both sides moved for partial summary judgment. Jefferson Pilot asserted that the state law claims were preempted by ERISA and that the plaintiffs were not entitled to either extracontractual damages or trial by jury. R. 29, 59-60, 76, 96. The plaintiffs sought summary judgment as to the liability of all defendants. R. 61-62. The trial court ruled on the pending motions on March 16, 1993, R. 104-05, denying plaintiffs' motion for summary judgment and holding that all plaintiffs' state law claims were preempted by ERISA. It also struck the jury demand and plaintiffs' ERISA claims to the extent that they sought extracontractual damages. The court certified its order for immediate appeal under Rule 54(b) of the Alabama Rules of Civil Procedure., R. 105, and the plaintiffs timely appealed the trial court's rulings on the ERISA issues to the Alabama Supreme Court.

The Alabama Supreme Court issued its decision on May 5, 1995. It affirmed the trial court's determination that the plaintiffs' state law claims were preempted by ERISA, but parted company with the trial court on the remaining issues. Plaintiffs' federal law claims, according to the court below, "alleged that Jefferson-Pilot (1) had breached fiduciary duties, and (2) had 'interfered with [their] rights to receive ERISA benefits.'" Pet. App. 9a. Relying on this Court's opinion in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), the Alabama Supreme Court held that in such cases the courts, state and federal, are authorized to award extracontractual and punitive damages. Pet. App. 16a-17a (quoting *Haywood v. Russell Corp.*, 584 So. 2d 1291, 1295-98 (Ala. 1991)). The court recognized that its conclusion was contrary to that reached by several other

courts, including the U.S. Court of Appeals for the Eleventh Circuit. *See* Pet. App. 17a.[2]

The trial court's ruling striking plaintiffs' jury demand was also reversed as a necessary consequence of the appellate court's conclusion that legal relief was recoverable. "[T]he right to recover compensatory and punitive damages 'leads inexorably to the right of trial by jury,' as guaranteed by [the Seventh Amendment]." Pet. App. 17a (quoting *Haywood*, 584 So. 2d at 1298). Once again, the Alabama Supreme Court acknowledged that its holding conflicted with Eleventh Circuit law,[3] but noted that it was free to disregard the rulings of the federal court of appeals on matters of federal law. Pet. App. 18a.

Jefferson Pilot timely applied for rehearing, pointing out that, pursuant to § 502(e), 29 U.S.C. § 1132(e), the state courts lack jurisdiction over ERISA claims for breach of fiduciary duty and interference with obtaining plan benefits.[4] Respondents opposed the application for rehearing and argued that "[s]tate courts have concurrent jurisdiction over ERISA matters" pursuant to § 502 (a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). The Alabama Supreme Court overruled Jefferson Pilot's application for

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[2] *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, 113 S. Ct. 61 (1992); *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991); *Zimmerman v. Sloss Equipment, Inc.*, 835 F. Supp. 1283 (D. Kan. 1993); *Roberts v. Thorn Apple Valley, Inc.*, 784 F. Supp. 1538 (D. Utah 1992); *accord Novak v. Andersen Corp.*, 962 F.2d 757 (8th Cir. 1992), *cert. denied*, 113 S. Ct. 2928 (1993).

[3] *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990).

[4] Rule 12(h) of the Alabama Rules of Civil Procedure, like its federal counterpart, directs the court to dismiss an action "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter." *See also International Longshoremen's Ass'n v. Davis*, 470 So. 2d 1215, 1216 (Ala. 1985), *aff'd*, 476 U.S. 380 (1986); *Ex Parte Smith*, 438 So. 2d 766 (Ala. 1983).

rehearing without opinion, two Justices dissenting. Pet. App. 21a.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari in this case and correct the egregious errors of the Alabama Supreme Court which threaten to undermine ERISA's civil enforcement scheme. In particular:

- The Alabama Supreme Court's basis for asserting state court jurisdiction conflicts with the express statutory provisions of ERISA.
- The remedies authorized by the Alabama Supreme Court are not available under ERISA for the claims asserted in this case.
- The Alabama Supreme Court's erroneous interpretation of *Ingersoll-Rand* subverts the clear intent of this Court and of ERISA.

This kind of corruption of an important federal scheme by a state court warrants prompt action by this Court.

ERISA is a "comprehensive and reticulated statute," [5] enacted by Congress after years of careful study and debate "to remedy certain defects in the private retirement system." [6] At the time of the statute's enactment, Congress emphasized that "the continued well-being and security of millions of employees and their dependents are directly affected by [employee benefit plans]." [7] Since then, the number of private pension plans alone has more than doubled, and in 1991 some 61 million employees

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[5] *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361-62 (1980).

[6] H.R. Rep. No. 533, 93d Cong., 1st Sess. 1 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4639.

[7] ERISA § 2(a), 29 U.S.C. § 1001(a).

participated in such plans.[8] In addition, more than 150 million Americans obtain health insurance coverage through employer-sponsored benefit plans regulated by ERISA.[9]

Among Congress's principal objectives in drafting ERISA was the elimination of the conflicting system of state and local regulation then governing the employee benefit field and the substitution of a single federal regulatory scheme.[10] Congress accomplished this goal by formulating detailed federal standards to guide fiduciaries of all employee benefit plans and by providing plan participants and beneficiaries with "six carefully integrated civil enforcement provisions." [11] To ensure that this pervasive federal framework would be preeminent, Congress expressly preempted, with certain narrow exceptions, all state laws that "relate to any employee benefit plan." [12] According to the legislation's Senate sponsor, "the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans." [13]

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[8] Employee Benefit Research Institute, *Questions and Answers on Employee Benefit Issues*, EBRI Issue Brief No. 150, at 11, 12 (June 1994).

[9] U.S. General Accounting Office, *Employer-Based Health Insurance* 1 (Sept. 1992).

[10] *See, e.g.*, H.R. Rep. No. 533, at 12, 1974 U.S.C.C.A.N. at 4650.

[11] *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985).

[12] ERISA § 514(a), 29 U.S.C. § 1144(a).

[13] 120 Cong. Rec. 29933 (1974) (statement of Sen. Williams). *See also New York Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1677-78 (1995); *Ingersoll-Rand*, 498 U.S. at 142; *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 99 (1983).

To underscore the importance of federal control in this area, Congress not only established a detailed set of standards and duties to guide fiduciaries, but also vested the federal courts with *exclusive* jurisdiction over suits alleging breach of fiduciary duty and other statutory violations.[14] Congress contemplated that the courts thus vested with exclusive jurisdiction would develop a "federal common law of rights and obligations under ERISA-regulated plans." [15]

Review of the decision of the Alabama Supreme Court is necessary to preserve the enforcement scheme that Congress crafted "with such evident care." *Russell*, 473 U.S. at 147. The decision below is a frontal attack on ERISA's enforcement scheme. By usurping the federal courts' exclusive jurisdiction over these ERISA claims, the decision below undermines the important principles of uniformity that underlie this scheme. The federal courts could not develop a uniform body of federal law if the state courts were free to create common law under ERISA that would conflict with that developed by the federal courts. This danger is highlighted by the decision below, which is directly contrary to the holdings of the Eleventh Circuit. That any errors by the state courts in this field ultimately can be corrected by this Court is of little comfort to those forced to operate under conflicting regimes in the interim.

Moreover, the court below held that ERISA itself provided plaintiffs with the very claims and remedies that it found preempted, including the right to recover legal relief and the right to trial by jury. This result flies in the face of the Court's holdings that (1) individual plaintiffs such as the Respondents here may not recover damages on their own behalf for breach of fiduciary duty

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[14] ERISA §§ 404, 405, 406, 29 U.S.C. §§ 1104, 1105, 1106; ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

[15] *Pilot Life*, 481 U.S. at 56; *accord* 120 Cong. Rec. 29942 (1974) (statement of Sen. Javits).

under §§ 409 and 502(a)(2) of ERISA (*Russell*, 473 U.S. at 144); (2) money damages may not be recovered in connection with a claim for violation of the statute brought under § 502(a)(3) of ERISA (*Mertens v. Hewitt Associates*, 113 S. Ct. 2063, 2068 (1993)); and (3) the remedies expressly provided for in § 502(a) of ERISA are exclusive (*Pilot Life*, 481 U.S. at 54). Not only is the Alabama Supreme Court's decision plainly wrong, but this kind of tinkering with ERISA's enforcement scheme threatens uniformity every bit as much as does the recognition of such claims under state law.

I. STATE COURTS LACK JURISDICTION OVER THE ERISA CLAIMS ASSERTED IN THIS CASE

The Alabama Supreme Court remanded this case to the trial court despite the fact that the ERISA claims asserted here are within the exclusive jurisdiction of the federal courts. Its decision cannot stand.

Section 502(e)(1) of ERISA expressly limits state court jurisdiction of ERISA claims to those brought under § 502(a)(1)(B), which precisely and narrowly defines the nature of the claims authorized thereby: to recover benefits due "under the terms of [the] plan," to enforce participants' rights "under the terms of the plan," or to clarify participants' right to future benefits "under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). This provision specifically does not reach claims for breach of fiduciary duty or other statutory violations. Thus, state courts may determine whether a participant is entitled to benefits under the plan and, if so, the amount of those benefits. But only *federal* courts are authorized to interpret and enforce the substantive provisions of the statute and, in particular, the fiduciary rules and the prohibition against interference with ERISA-protected rights.

The Respondents have stated no claim within the purview of § 502(a)(1)(B). The gravamen of Respondents'

action against Jefferson Pilot is that the Respondents were injured by the insurer's failure to notify them of the status of Johnson Trucking's medical insurance policy—*i.e.*, that premiums were delinquent—and by the retroactive cancellation of the policy. Respondents do not claim to be entitled to benefits under the lapsed policy, but rather seek a monetary recovery to compensate them for, among other things, the medical expenses that they incurred *because* the policy had lapsed. As the court below noted, the ERISA-based claims implicated by these allegations are breach of fiduciary duty and interference with the protected rights. Pet. App. 9a. Such conduct, if proved, violates §§ 404 and 510 of ERISA, respectively, and is redressable as provided in §§ 409 and 502(a).

Without doubt, such claims may be heard only in the federal courts: "Except for actions under subsection (a)(1)(B) of this section, *the district courts of the United States shall have exclusive jurisdiction of civil actions under this title. . . .*" 29 U.S.C. § 1132(e)(1) (emphasis added).[16] Section 404 claims for breach of fiduciary duty are cognizable under § 502(a)(2), which permits an action to be brought "for appropriate relief under section 409." 29 U.S.C. § 1132(a)(2). All other statutory claims, including claims alleging violation of § 510, fall within the ambit of § 502(a)(3). 29 U.S.C. § 1132(a)(3) (equitable relief may be awarded to enjoin or redress "any act or practice which violates any provision of this title").[17]

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[16] Despite the apparently plain language of the statute, at least one other state court has exercised jurisdiction over ERISA claims for breach of fiduciary duty. Thus, in *Suarez v. Food Lion, Inc.*, 398 S.E.2d 60 (N.C. App. 1990), the court, without examining the basis of its subject matter jurisdiction, held that an individual beneficiary could not recover for breach of fiduciary duty.

[17] The issue of whether a claim for fiduciary breach may be brought under § 502(a)(3) as well as under § 502(a)(2) is presented in *Varity Corp. v. Howe*, No. 94-1471, currently pending before this Court.

The Alabama Supreme Court views concurrent jurisdiction under § 502(a)(1)(B) as extending to statutory violations, in addition to claims for benefits. *See* Pet. App. 16a, 19a. By usurping authority that Congress expressly gave to the federal courts alone, the decision below sets a dangerous precedent that threatens to undermine much that Congress sought to accomplish in enacting ERISA.

II. THE COURTS ARE PRECLUDED FROM AWARDING COMPENSATORY AND PUNITIVE DAMAGES TO REDRESS THE ERISA VIOLATIONS ALLEGED IN THIS CASE

As noted above, Respondents allege violations of ERISA's fiduciary standards and the prohibition against interfering with protected rights. ERISA §§ 404-405, 510. *Russell* holds that individual participants and beneficiaries may not recover damages on their own behalf in an action for breach of fiduciary duty under §§ 409 and 502(a)(2). *Mertens* holds that monetary relief—compensatory and punitive damages—may not be recovered in an action brought under § 502(a)(3) for other statutory violations. And *Pilot Life* holds that the remedies expressly provided for in § 502(a) are exclusive. Together, this authority bars recovery of the relief sought by the Respondents in this case and mandates reversal of the decision below.

In *Russell*, this Court squarely held that plan participants may not recover extracontractual damages, compensatory or punitive, on their own behalf in an action for breach of fiduciary duty:

> A fair contextual reading of the statute makes it abundantly clear that its draftsmen were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of an individual beneficiary.

473 U.S. at 148. Section 409 of ERISA prescribes the remedies that may be awarded for breach of fiduciary

duty and expressly provides that those remedies run to the *plan* and not to the individual participant who brings the action. *Id.* at 140. In addition, nothing in § 502(a) expressly authorizes the award of extracontractual damages, and no such authorization could be implied. *Id.* at 147-48. To the extent that Respondents seek extracontractual damages for breach of fiduciary duty, therefore, *Russell* forecloses recovery.

Indeed, it is doubtful that individual participants may maintain an action *at all* for breach of fiduciary duty on their own behalf. Section 502(a)(3) authorizes a cause of action for violations of the statute generally, but it is unlikely that claims for breach of fiduciary duty, for which Congress created a specific cause of action in § 502(a)(2), are also cognizable under that general provision. The Court did not reach this issue in *Russell*, but the issue is currently before the Court in *Varity Corp. v. Howe*, No. 94-1471.[18] Should the Court reverse the decision of the Eighth Circuit in *Varity*, Respondents' claim for breach of fiduciary duty must be dismissed in its entirety.

The Respondents' claim for interference with protected rights under § 510 of ERISA fares no better than does their fiduciary breach claim. Claims for violation of § 510 are cognizable under § 502(a)(3). *See Ingersoll-Rand*, 498 U.S. at 143. In *Mertens*, this Court unequivocally held that compensatory and punitive damages are not recoverable as "appropriate equitable relief" under § 502(a)(3). 113 S. Ct. at 2068. Thus, it is clear that ERISA does not, by its terms, entitle Respondents to the relief they seek.

It is equally clear that this Court's ERISA jurisprudence precludes the courts from recognizing causes of action

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[18] As presented in *Varity Corp.*, the issue is "[d]oes [ERISA] § 502(a)(3), 29 U.S.C. § 1132(a)(3), permit individual ERISA plan participants and beneficiaries to sue on their own behalf for alleged breaches of fiduciary duty under ERISA?" Brief of Petitioner at i, *Varity Corp. v. Howe*, No. 94-1471 (filed June 23, 1995).

and fashioning remedies not expressly authorized by the statute. The Court reached this conclusion the first time it examined § 502(a) in Russell:

> The six carefully integrated civil enforcement provisions found in § 502(a) of the statute . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.

473 U.S. at 146 (emphasis in original). The point was forcefully reaffirmed two years later in *Pilot Life*:

> The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.

481 U.S. at 54. And the Court remained faithful to these principles in *Mertens*, its most recent treatment of § 502(a), in which it noted that "[t]he authority of courts to develop a 'federal common law' under ERISA . . . is not the authority to revise the text of the statute." 113 S. Ct. at 2070 (citation omitted).

The Alabama Supreme Court held otherwise, ignoring *Russell*, *Pilot Life*, and *Mertens*, and relying instead on dictum from *Ingersoll-Rand*. See Pet. App. 15a. The Alabama court understands *Ingersoll-Rand* as expressly authorizing the courts (state and federal) to fashion remedies that are not provided for in ERISA itself. *Id.* at 15a-16a. Any such holding would have effectively overruled *Russell* and *Pilot Life*, since both of those decisions predated *Ingersoll-Rand*. That the Court did not intend this result is confirmed by its failure in *Ingersoll-Rand* to acknowledge that it was overruling those earlier cases and by the Court's continued adherence to the *Russell-Pilot Life* principles in *Mertens*.

Unlike the Alabama Supreme Court, the federal courts of appeals, including the Court of Appeals for the Eleventh Circuit, have given effect to both the letter and the

spirit of this Court's precedents. Thus, for example, in *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991), the Eleventh Circuit anticipated *Mertens* and squarely held that "extra-contractual damages are not available under ERISA § 502(a)(3), 29 U.S.C. § 1132 (a)(3)." 920 F.2d at 821; *accord Novak v. Andersen Corp.*, 962 F.2d 757, 759 (8th Cir. 1992) (an award of monetary damages is not "appropriate equitable relief"); *Harsch v. Eisenberg*, 956 F.2d 651, 660 (7th Cir.) ("We will continue to doubt the availability of extra-contractual damages under ERISA until a more plausible signal [than the *Ingersoll-Rand* dictum] reaches us from above."), *cert. denied*, 113 S. Ct. 61 (1992). The state court below was aware of the Eleventh Circuit's view, but declined to follow it. *See* Pet. App. 17a.

Not only is the decision below plainly wrong, but it poses a grave threat to the integrity of ERISA's carefully-crafted enforcement scheme. As far afield from this Court's teachings as the decision below appears, it is not an aberration. *Ingersoll-Rand* has been read by several courts as providing *carte blanche* to award all manner of legal relief in ERISA actions,[19] and the decision below indicates that the confusion has not been put to rest by *Mertens*. At the very least, the decision below subjects the administrators of any benefit plan covering even a single citizen of Alabama to just the sort of conflicting

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[19] *See McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29, 35 (D.D.C. 1991) (Seventh Amendment requires jury trial in ERISA cases where recovery sought is traditional tort remedy, authorized by *Ingersoll-Rand*); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Midland Steel Products*, 771 F. Supp. 860, 861 (N.D. Ohio 1991) (§ 502(a) provides "legal remedies in [§ 510] cases . . . where both legal and equitable issues are presented); *Blue Cross & Blue Shield of Alabama v. Lewis*, 753 F. Supp. 345, 347 (N.D. Ala. 1990) ("[t]his court can read and understand the English language," and *Ingersoll-Rand* provides for recovery of compensatory and punitive damages in ERISA cases).

regulation Congress sought to avoid. *See, e.g., Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-11 (1986).

In the decision below, the Alabama Supreme Court misconstrued some of this Court's teachings and ignored others. In addition, the Alabama court knowingly ruled on an issue of federal law in a manner that conflicts with Eleventh Circuit precedent. This Court should grant certiorari and reverse the decision below in order to preserve the important federal interests at stake.

III. RESPONDENTS ARE NOT ENTITLED TO A JURY TRIAL

The conclusion of the Alabama Supreme Court that Respondents' ERISA claims are triable by a jury followed "inexorably" from its conclusion that legal relief was recoverable. Pet. App. 17a. Since the court was wrong about the nature of the relief recoverable, it was also wrong in holding that the Respondents are entitled to trial by jury.

Whether the right to a jury trial exists in ERISA actions is an issue that has been frequently litigated in the lower courts. Resolution of the issue turns on whether the type of relief available is legal or equitable. The Seventh Amendment generally preserves the right of trial by jury "[i]n Suits at common law," U.S. Const., amend. VII, and this Court has instructed that the Seventh Amendment "requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 294 (1974). By contrast, where "equitable rights alone [are] recognized, and equitable remedies alone [are] administered," the Seventh Amendment has no application. *Teamsters Local 391 v. Terry*, 494 U.S. 558, 564 (1990) (citation omitted).

As demonstrated above, Respondents are not entitled to recover monetary damages in connection with their ERISA claims. Respondents do not seek a recovery on behalf of their plan and thus, under *Russell*, cannot re-

cover under §§ 409 and 502(a)(2). The Court's decision in *Varity Corp.* will determine whether a claim for fiduciary breach may be maintained on behalf of individuals under § 502(a)(3). But even if such a right is recognized, the remedies available under § 502(a)(3) are limited to injunctions and "appropriate equitable relief," 29 U.S.C. § 1132(a)(3), which do not carry the right to trial by jury. And these same equitable remedies constitute the only relief that may be awarded to redress a violation of § 510, which is also cognizable under § 502(a)(3).

The court below concluded that the Respondents are entitled to a jury trial, but did not do so on the ground that § 502(a)(3) claims are legal in nature. Rather, the court continued under the erroneous assumption that Respondents' claims were brought under § 502(a)(1)(B) and held that a plaintiff may be entitled to a jury trial thereunder. Pet. App. 18a-19a. The issue whether the right to trial by jury exists for § 502(a)(1)(B) actions, which involve enforcement of plan terms, has divided the courts.[20] But that question is not properly presented in

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[20] The weight of authority holds that such claims are equitable in nature and thus need not be tried by a jury. *See, e.g., Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003 (4th Cir. 1985); *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980); *Blair v. General Motors Corp.*, 895 F.2d 1094 (6th Cir. 1990); *Wardle v. Central States Southeast & Southwest Areas Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 499 U.S. 1112 (1981); *In re Vorahl*, 695 F.2d 318 (8th Cir. 1982); *Spanial v. Gaughan*, 12 F.3d 853 (9th Cir. 1993); *Blau v. Del Monte Corp.*, 748 F.2d 1348 (9th Cir. 1984), *cert. denied*, 478 U.S. 865 (1985); *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990). This view is by no means uniform, however, as the Alabama court pointed out. *See, e.g., Sullivan v. LTV Aerospace & Defense Co.*, 850 F. Supp. 202 (W.D.N.Y. 1994); *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 882 (S.D.N.Y. 1990); *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29 (D.D.C. 1991); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of Am. v. Midland Steel Co.*, 771 F. Supp. 860 (N.D. Ohio 1991); *Gangitano v. NN Investors Life Ins. Co.*, 733 F. Supp. 342 (S.D.N.Y. 1990).

this case, because the Respondents are not suing to enforce the terms of their plan. It is worth noting, however, that the conclusion of the Alabama court that jury trials are available under § 502(a)(1)(B), like its conclusion as to the availability of extracontractual damages, is directly contrary to Eleventh Circuit precedent. *Blake v. Unionmutual Stock Life Insurance Co.*, 906 F.2d at 1526 (§ 502(a)(1)(B) claims are "equitable in nature" and do not carry the Seventh Amendment's guarantee of a jury trial); *accord Chilton v. Savannah Foods & Industries*, 814 F.2d 620 (11th Cir. 1987); *see* Pet. App. 18a (state court need not follow federal court on issues of federal law).

Because only equitable relief may be awarded in connection with Respondents' viable ERISA claims, the Respondents are not entitled to trial by jury.

IV. THIS CASE IMPLICATES AN ISSUE THAT IS CURRENTLY BEFORE THE COURT IN *VARITY CORP. v. HOWE*

On April 24, 1995, the Court granted certiorari to review the judgment of the Court of Appeals for the Eighth Circuit in *Howe v. Varity Corp.*, 36 F.3d 746 (8th Cir. 1994). That case, styled *Varity Corp. v. Howe*, No. 94-1471, in this Court, presents two questions, the first of which reads:

> Does [ERISA] § 503(2)(3) . . . permit individual ERISA plan participants and beneficiaries to sue on their own behalf for alleged breaches of fiduciary duty under ERISA?

Brief of Petitioner at i, *Varity Corp. v. Howe*, No. 94-1471 (filed June 23, 1995). Like the respondents in *Varity Corp.*, Respondents here are individual beneficiaries of an ERISA plan who have sued on their own behalf for breach of fiduciary duty.

In *Varity Corp.*, the plaintiffs alleged a breach of fiduciary duty in connection with their employer's actions in transferring them to a newly created affiliate for the apparent purpose of excluding them from participating in the employer's medical insurance plan. The relief awarded included an injunction requiring the employer to reinstate certain of the plaintiffs as members of the plan. In addition, such plaintiffs were awarded monetary relief measured by the amounts expended in premiums for replacement health insurance and sums "that plaintiffs would have received if they had remained members of the . . . Plan." 36 F.3d at 756. In the dissent's view, recovery for the cost of obtaining replacement insurance coverage constituted "traditional consequential legal damages" and not equitable relief authorized by § 502(a)(3). 36 F.3d at 757 (Hansen, J., concurring in part and dissenting in part). The court of appeals nevertheless upheld the award, concluding that § 502(a)(3) of ERISA authorizes actions by individual participants on their own behalf for breach of fiduciary duty and characterizing the relief awarded by the district court as restitution.

Thus, *Varity Corp.*, will resolve an issue left open in *Russell* and directly implicated in this case—whether an individual participant may sue on his own behalf for breach of fiduciary duty under § 502(a)(3) of ERISA. In addition, it is likely that *Varity Corp.* will address the scope of the available relief, assuming that the cause of action asserted is cognizable under § 502(a)(3). Thus, the outcome in *Varity Corp.* will affect the proper resolution of this case.

CONCLUSION

The Alabama Supreme Court has clearly overstepped the limits of state court jurisdiction over claims under ERISA. Moreover, the decision below is in direct conflict with the rulings of this Court and the Eleventh Circuit on important issues of federal law. The decision exemplifies the extent to which *Ingersoll-Rand* has been misinterpreted by the lower courts and signals the need for definitive guidance from this Court. Finally, the Court's disposition of *Varity Corp. v. Howe* will have a direct impact on this case, since the Respondents here are seeking to maintain an action for breach of fiduciary duty on their own behalf as plan beneficiaries.

For the reasons stated herein, certiorari should be granted and this case should be summarily reversed. In the alternative, this case should be heard with *Varity Corp. v. Howe*, No. 94-1471, or held and disposed of in light of this Court's decision in *Varity Corp.*

Respectfully submitted,

JOHN E. NOLAN
Counsel of Record
PAUL J. ONDRASIK, JR.
SARA E. HAUPTFUEHRER

STEPTOE & JOHNSON
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for Jefferson-Pilot Life Insurance Company, Inc.

August 4, 1995

APPENDIX A

[Released May 5, 1995]

SUPREME COURT OF ALABAMA

OCTOBER TERM, 1994-95

1920981

WILLARD WEAMS [sic] and JULIA WEEMS

v.

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC., *et al.*

Appeal from Laudardale [sic] Circuit Court
(CV-91-008)

COOK, JUSTICE.

Willard and Julia Weems appeal from a summary judgment entered against them in their action against Jefferson-Pilot Life Insurance Company, Inc. ("Jefferson-Pilot"), in which they seek compensatory and punitive damages, based on Jefferson-Pilot's failure to pay a claim for insurance benefits. We affirm in part; reverse in part; and remand.

The following facts are essentially undisputed. In 1988, A.C. Johnson Trucking Company ("Johnson"), employed Willard Weems as its "marketing manager." In the same year, Johnson began providing major medical, life, and disability insurance for its employees, through a policy underwritten by Jefferson-Pilot. This

arrangement also allowed Johnson's employees to purchase coverage for their dependents through monthly payroll deductions.[1]

Johnson failed to pay Jefferson-Pilot the premiums due for the months of December 1988 and January and February 1989. This delinquency resulted in an automatic termination of coverage, subject to a 60-day grace period. Johnson eventually paid the arrearage, and coverage of its employees was reestablished. However, by October 1, 1989, Johnson's premium payments were again three months overdue, and Jefferson-Pilot notified Johnson that the policy had been canceled, effective July 31, 1989. Once again, Johnson paid the arrearage, and coverage, which was thus reestablished, continued uninterrupted until March 1990. On April 23, 1990, Jefferson-Pilot notified Johnson that it had not received the March premium, and, further, stated that Johnson would receive "a notice of confirmation of termination," absent receipt of the amount of delinquent premiums within 15 days.

Johnson did not pay the premiums; nevertheless, on May 5, 1990, Jefferson-Pilot's "Underwriting Department" authorized a six-month plan renewal. Before July 27, 1990, Jefferson-Pilot contacted Johnson at least once more regarding the delinquent premiums. On that date, however, having received no payment, Jefferson-Pilot sent Johnson a letter stating that its insurance plan had been canceled, effective April 30, 1990. On August 1, 1990, Johnson, for the first time, notified its employees of the lapse of coverage.

Meanwhile, on June 5, 1990, Weems suffered a heart attack and required emergency hospitalization. Jefferson-Pilot, through its "insurance plan's notification procedures," was apprised of Weems's condition, and, on three

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[1] For coverage of his wife Julia, Willard Weems authorized deductions from his wages at the rate of approximately $33 per month.

different occasions, it "certified," or approved, his hospitalization, through June 28, 1990. Weems initially incurred $18,000 in medical expenses. Before July 27, 1990, Jefferson-Pilot paid in excess of $6,000 of Weem's expenses. After that date, however, Jefferson-Pilot ceased paying claims, and, in addition, successfully sought reimbursement from Weems's medical providers.

On January 4, 1991, the Weemses sued Johnson, alleging (1) breach of contract and fiduciary duty, (2) fraud, and (3) conversion of payroll deductions. The Weemses eventually amended their initial complaint to include numerous claims against Jefferson-Pilot, alleging violations of state and federal law. More specifically, their state-law claims alleged that Jefferson-Pilot had breached duties owed to the Weemses (1) to inform them of Johnson's failure to pay insurance premiums; (2) to continue coverage through July 27, 1990; and (3) to pay the medical expenses to which the Weemses were contractually entitled. Their state-law claims against Jefferson-Pilot also included allegations of (4) fraud and (5) bad faith refusal to pay Weems's medical expenses.

The Weemses' federal-law claims against Jefferson-Pilot alleged violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C.S. §§ 1001-1461 ("ERISA"). More specifically, the Weemses alleged that Jefferson-Pilot had, by failing to notify them that premium payments were delinquent, and by retroactively terminating coverage, (1) fraudulently, negligently, wantonly, or intentionally "interfered with [their] rights to receive ERISA benefits," and, (2) fraudulently, negligently, wantonly, or intentionally breached fiduciary duties, as those duties are expressed in §§ 1104-05. The Weemses alleged, among other things, that "[a]s a proximate result of [Jefferson-Pilot's] conduct," Willard Weems had suffered a loss of wages, accompanied by pain and emotional distress; had incurred liability for past medical treatment; and had incurred a medical condition, for

which, he contends, he will be unable to obtain alternative coverage.

The Weemes sought compensatory and punitive damages for the alleged violation of their state-law rights. For alleged violations of rights arising under ERISA, they sought the following specific remedies:

> "1. Recovery of monetary damages for medical expenses incurred by . . . Willard Weems, pursuant to 29 U.S.C. Sec. 1109; 29 U.S.C. Sec. 1132(a)(3) and 29 U.S.C. 1132(a)(1)(b); and 29 U.S.C. 1105 (a)(1) and (a)(3); 29 U.S.C. 1104(a) and (b).
>
> "2. Compensatory and punitive damages for lost wages through payroll deductions from March of 1990 through August 1 of 1990 for wages that could have been used to pay for dependent coverage.
>
> "3. Compensatory damages for the emotional anxiety and frustration in being misled into believing that [his] medical expenses were to be paid and for becoming personally obligated to pay for such medical expenses.
>
> "4. Interest on wages and medical expenses.
>
> "5. Attorney's fee costs as permitted by 29 U.S.C. 1132(g)(2)(D).
>
> "6. Punitive and compensatory damages for the Defendants' intentional, wanton, reckless, and negligent interference with [his] right to receive plan benefits, for fraudulently misrepresenting to the [Weemses] that there was an ERISA plan in force and effect, for failing to inform the Plaintiffs of the suspension termination of plan coverage in a timely manner; for failing to timely notify [them] of nonpayment of premiums, for interfering with [their] right to seek alternative health insurance, and for unlawfully converting wages deducted to pay for dependent coverage.

> "7. Future medical expenses to insure that [Weems] will have adequate financial resources to care for any future heart condition and continue treatment.
>
> "8. Such other legal and equitable relief to which [Weems] may be entitled."

Jefferson-Pilot moved for a partial summary judgment, contending that ERISA preempts the claims "sound[ing] in tort"; that ERISA does not authorize recovery of "extracontractual" and punitive damages; and that ERISA does not authorize jury trials in actions brought pursuant to its provisions. The trial court granted Jefferson-Pilot's motion, holding that the "state law claims for breach of contract[,] . . . bad faith, fraud, negligence, wantonness and willfulness" are preempted by ERISA. It further held that ERISA does not authorize recovery of "extra-contractual or punitive damages," or allow the resolution of claims by a jury. The trial judge made the partial summary judgment final, pursuant to Ala. R. Civ. P. 54(b), and the Weemses appealed. We confine our discussion to the precise grounds cited above as bases for the summary judgment.

I. ERISA Preemption

ERISA § 514(a), codified at 29 U.S.C. § 1144(a), sets forth in the following terms the scope of the statutory scheme's preemptive effect:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

(Emphasis added.) " 'A law "relates to" an employee benefit plan, in the normal sense of the phrase, if it has

a connection with or reference to such a plan.' " *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990) (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983)). "Under this 'broad common-sense meaning,' a state law may 'relate to' a benefit plan, and thereby be preempted, even if the law is not specifically designed to affect such plans, or the effect is only indirect." *Id.* 498 U.S. at 139 (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987)). Moreover, the scope of preemption "includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." ERISA, § 1144(c).

The Weemses concede, as they must, that their state law claims "relate to" an ERISA plan. However, they contend that those claims are excepted from preemption by the application of § 1144(b)(2)(A), which states: "Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." Their claims are "saved," they argue, by the provisions of § 1144(b)(2)(A), because, they insist, the rule this Court announced in *Newton v. United Chambers Insured Plans*, 485 So. 2d 1147 (Ala. 1986), constitutes an Alabama law "regulat[ing] insurance." They contend, in other words, that their state-law claims against Jefferson-Pilot are viable, based on the duty arising under *Newton*.

Newton involved a question certified to this Court from the United States District Court for the Southern District of Alabama. That court inquired whether Alabama law required "a group insurer [to] notify a participant of termination of the policy for [the employer's] nonpayment of the premium where the covered employee does not contribute to the premium." *Id.* at 1149. Under circumstances similar in all relevant respects to those involved in this case, this Court held that "a group insurer is required to notify a participant of cancellation or modi-

fication of the policy if the interests of the participant are adversely affected thereby." *Id.* at 1150.

Subsequently, at least two federal courts squarely addressed arguments identical to the one made here by the Weemses, namely, that the *Newton* rule is "saved" by § 1144(b)(2)(A). Both courts rejected those arguments. In *Presley v. Blue Cross-Blue Shield of Alabama*, 744 F. Supp. 1051 (N.D. Ala. 1990), the court explained:

> "The courts have developed a two-step test to determine whether a sate [sic] law falls within the saving provision of 29 U.S.C. § 1144(b)(2)(A). *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 48, 107 S. Ct. at 1553, 95 L. Ed. 2d at 48-49; *Anschultz v. Connecticut General Life Insurance Co.*, 850 F.2d 1467, 1468 (11th Cir. 1988). First, the law must 'regulate' insurance, the commonsense view of that phrase being that the law must not just have an impact on the insurance industry, but must be specifically directed toward that industry. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 48, 107 S. Ct. at 1553, 95 L. Ed. 2d at 48; *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 740, 105 S. Ct. 2380, 2389, 85 L. Ed. 2d 728 (1985). Second, the law must regulate the 'business of insurance,' as that phrase has been interpreted in case law under the McCarran-Ferguson Act, 59 Stat. 33, 15 U.S.C. § 1011, *et seq.* Three factors have been used to determine whether a practice falls under the 'business of insurance' for purposes of the McCarran-Ferguson Act: (1) whether the practice has the effect of spreading a policyholder's risk; (2) whether the practice is an integral part of the policy relationship between the insurer and the insured; and (3) whether the practice is limited to entities within the insurance industry. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 48-49, 107 S. Ct. at 1553, 95 L. Ed. 2d at 48;

> *Anschultz v. Connecticut General Life Insurance Co.*, 850 F.2d at 1468. Moreover, the court is guided by an understanding that the civil enforcement remedies of ERISA were intended by the Congress to be exclusive. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 54, 107 S. Ct. at 1556, 95 L. Ed. 2d at 52."

Applying these factors, the court concluded that the *Newton* rule did not "regulate insurance," as that concept is expressed in § 1144(b)(2)(A). More specifically, the court concluded that the *Newton* rule did not constitute "an integral part of the policy relationship between the insurer and the insured." It reasoned:

> "Whether the *Newton* rule can be said to represent an integral part of the relationship between the insured and the insurer is tenuous at best. In employee health insurance plans of the type considered in *Newton* and of the type covered by ERISA it is ordinarily the employer, or plan sponsor, who has a direct relationship with the insurance company. *Newton* does nothing more than to advise the plan participant of the need to act because of the delinquency of his employer. That might entail the establishment of a direct relationship between the insurance company and the plan participant but does not, in the opinion of the court, involve an integral part of the relationship then existing. In other words, compliance with *Newton* may create a direct relationship between the insurer and the insured. But, there being no such direct relationship prior to the employer's default, the rule cannot represent an integral part of a non-existent relationship."

Presley, 744 F. Supp. at 1061. More recently, the Court of Appeals for the Eleventh Circuit, like the court in *Presley*, concluded that "the *Newton* rule does not . . . constitue an 'integral relationship between the insurer and the insured,'" and, consequently, that § 1144(b)(2)(A) did not exempt from preemption state-law claims based on

Newton. Willett v. Blue Cross & Blue Shield of Alabama, 953 F.2d 1335, 1341 n.6 (11th Cir. 1992).

We are unable to conclude that these courts erred in determining that the *Newton* rule fails to satisfy the criteria for exemption from preemption. Thus, the trial court did not err in holding that the Weemes's "state law claims for breach of contract[,] . . . bad faith, fraud, negligence, wantonness and willfulness," were preempted by ERISA. To the extent that the trial court so held, its judgment is affirmed.

II. ERISA Claims

The Weemses' federal-law claims alleged that Jefferson-Pilot (1) had breached fiduciary duties, and (2) had "interfered with [their] rights to receive ERISA benefits." The trial judge granted Jefferson-Pilot's partial motion for a summary judgment, agreeing with its contention that ERISA does not authorize recovery of punitive damages, or of "extracontractual" damages, that is, " '[d]amages that would give a beneficiary more than he or she is entitled to receive under the strict terms of the plan.' " *Lawrence v. Jackson Mack Sales, Inc.*, 837 F. Supp. 771, 786 (S.D. Miss. 1992), *aff'd*, 42 F. 3d 642 (5th Cir. 1994).

In *Haywood v. Russell Corp.*, 584 So. 2d 1291 (Ala. 1991), this Court, relying extensively on *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), discussed at length the availability of extracontractual damages under ERISA. Indeed, it interpreted that case as holding that state and federal "courts are authorized to award damages, *both extracontractual, and even punitive*, where the facts support them, . . . though they are not specifically provided for in ERISA." 584 So. 2d at 1297 (emphasis added). Because *Haywood*'s conclusions regarding the species of damages recoverable under ERISA are so pertinent to the disposition of that issue in this case, we here incorporate the following extensive excerpt:

"The (*Ingersoll-Rand*) Court unequivocally stated:

> " 'Not only is § 502(a) the exclusive remedy for vindicating § 510-protected rights, there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek 'pension benefits.' It is clear that the relief requested here [compensatory and punitive damages for tortiously terminating a participant's employment] is well within the power of federal courts to provide. Consequently, it is no answer to a pre-emption argument that a particular plaintiff is not seeking recovery of pension benefits.'

"498 U.S. at 145, 111 S. Ct. at 486.

"All of the Justices of the Supreme Court joined Justice O'Connor in the following statements:

> " '[T]he [Texas] court held that under Texas law a plaintiff could recover in a wrongful discharge action if he established that "the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." The court noted that federal courts had held similar claims pre-empted by ERISA, but distinguished the present case on the basis that McClendon was "not seeking lost pension benefits but [was] instead seeking *future lost wages, mental anguish and punitive damages* as a result of the wrongful discharge."
>
> " 'Because this issue has divided state and federal courts, we granted certiorari, and now reverse."

"498 U.S. at 136-37, 111 S. Ct. at 481-82 (citations omitted; emphasis omitted; emphasis added [in *Haywood*]).

"The facts in the case before us are indistinguishable from those in *Ingersoll-Rand*. In that case the employee alleged that his employer had tortiously terminated his employment just before his plan benefits would have vested and that he had been damaged as a result of that alleged action of the employer. The Supreme Court held that a remedy for that tort existed under § [1140] and that the state court was authorized to award damages *beyond the benefits to which the plaintiff was entitled under the plan.* In this case the plaintiff alleges facts from which a factfinder could conclude that the employer tortiously interfered with her right to disability benefits under an ERISA plan. She seeks compensatory and punitive damages for that interference. *Ingersoll-Rand* teaches that this plaintiff's allegations state a cause of action under § [1140] and that a remedy exists under § [1132(a)] that may be enforced in the federal or state courts notwithstanding that the state common law tort claim is preempted by the Act.

". . . .

". . . The late Judge Robert S. Vance, in an opinion issued after his death, anticipated such action by the Supreme Court of the United States. In *Kane v. Aetna Life Insurance Co.*, 893 F. 2d 1283 (11th Cir. 1990), *cert. denied*, 498 U.S. 890, 111 S. Ct. 232, 112 L.Ed. 2d 192 (1990), Judge Vance, writing for the United States Court of Appeals for the 11th Circuit, stated that although ERISA preempts all state common law claims relating to employee benefit plans, 'Federal courts possess the authority, . . . to develop a body of federal common law to govern issues in ERISA actions not covered by the act itself.' District Judge William M. Acker, Jr., in *Blue Cross & Blue Shield of Alabama v. Lewis*, 753 F. Supp. 345 (N.D. Ala. 1990), observed that '*Ingersoll-Rand* brings to full flower' the idea expressed

by Judge Vance that federal courts have the authority to develop remedies beyond those expressly provided by ERISA. Judge Acker then stated:

> " 'In *Amos v. Blue Cross-Blue Shield of Alabama,* 868 F.2d 430 (11th Cir. 1989), the Eleventh Circuit, prior to *Ingersoll-Rand,* had carried the concept of ERISA 'preemption' to its ultimate reach. *Amos* would eliminate the possibility of recognizing any statutorily unspecified federal remedy under ERISA, especially if it would duplicate any 'preempted' state remedy. *Amos* ended with the following near apology:
>
> > " ' "We acknowledge that by eliminating the possibility that insurance companies may be liable for punitive or extra-contractual damages, the courts are removing an historical disincentive to insurance company misbehavior. Consequently, our decision may produce unintended results. However, any change in the law's course will have to be charted by the Congress *or the Supreme Court.*'
>
> "Id. at 433 (emphasis supplied [by Judge Acker]).
>
> "In *Ingersoll-Rand* the Supreme Court has now clearly answered the Eleventh Circuit's prayer by giving it the "green light" to fashion ERISA remedies beyond the mere enforcement of claims for unpaid benefits, even though a federally fashioned remedy may bear striking similarity to some "preempted" state or common law remedy. According to *Ingersoll-Rand,* a court, *state or federal,* in an ERISA case, may as an ERISA remedy, award *extracontractual, even punitive damages,* that is, if the facts call for such a remedy. This was the idea which

> this court was endeavoring to articulate in *Amos v. Blue Cross-Blue Shield of Alabama*, 681 F. Supp. 1515 (N.D. Ala. 1988). This court did not and could not express the idea as forcefully as Justice O'Connor has now expressed it. Some ERISA-governed employers and administrators claim to be in a state of shock in the wake of *Ingersoll-Rand*. They say the Supreme Court did not know what it was saying in *Ingersoll-Rand*. This court [respectfully] disagrees, being willing to attribute literacy to the Supreme Court. This court can read and understand the English language and believes that the Supreme Court would not say something this important without being careful and deliberate in its choice of words. After all, the Supreme Court granted certiorari in *Ingersoll-Rand* for the very reason that the "preemption" question "has divided state and federal courts." [498 U.S. at 137,] 111 S.Ct. at 481. The Supreme Court would not undertake to clear up the differences of opinion in a way which would create a new basis for misunderstanding. There is no reason in *Ingersoll-Rand* for any misunderstanding of the Supreme Court's intent.'

"753 F. Supp. at 347.

"We agree entirely with Judge Acker's reading of *Ingersoll-Rand*. The holding is unanimous and unequivocal. No reasonable person can misunderstand it, although one might disagree with it. In our view, it comes as no surprise. The dissatisfaction with the Court's broad interpretation of the preemption provisions of ERISA, without specifically articulating what remedies existed to replace preempted state remedies, has been often brought to the attention of Congress by those, such as the writer of this opinion, who believed that the Court's construction of the pre-

emption provisions of ERISA, without a recognition of some rights and remedies to take the place of preempted state rights and remedies, went beyond what the Congress intended. As recently as 1988, the Education and Labor Committee of the House of Representatives described the legislative intent behind ERISA as follows:

> " 'In recent years, the Committee has received numerous complaints and inquiries from Members of Congress and their constituents about improper denials of medical claims, improper denials of continuation coverage, or unreasonable delays in processing claims by employers or insurers. Participants in ERISA-covered employee benefit plans that have been treated in this manner are concerned that the Supreme Court's interpretation of ERISA (particularly as articulated in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S. Ct. 1549 [95 L.Ed. 2d 39] (1987)) as preempting state laws that authorize punitive or other extra-contractual damages in connection with claims for benefits effectively denies them legal recourse. The Committee shares their concern. In *Pilot Life*, the Supreme Court held that state common law claims against an insurance company for breach of contract and bad faith arising out of an improper denial of disability benefit claims under an ERISA-covered plan were preemtped. In addition, the Supreme Court declined to fashion a federal common law remedy for improper processing of benefit claims[,] holding that ERISA's civil enforcement provisions under Section [1132], were intended to be the exclusive remedies afforded to plan participants and beneficiaries. The Committee disagrees with this latter conclusion. *The Committee believes that the legislative history of ERISA and subsequent expansions of ERISA support the view*

> *that Congress intended for the courts to develop a federal common law with respect to employee benefit plans, including the development of appropriate remedies, even if they are not specifically enumerated in Section 502 [29 U.S.C. § 1132] of ERISA.* Since the issue of preemption and civil remedies under ERISA is within the exclusive purview of the labor committee of Congress, the Committee has, over the years, considered the option of amending the statute to encompass specifically several additional remedies. In light of the legislative history on this issue, however, the Committee believes such action is unnecessary. The Committee reaffirms the authority of the Federal Courts to shape legal and equitable remedies to fit the facts and circumstances of the cases before them, even though those remedies may not be specifically mentioned in ERISA itself. *In cases in which, for instance, facts and circumstances show that the processing of legitimate benefit claims has been unreasonably delayed or totally disregarded by an insurer, an employer, a plan administrator, or a plan, the Committee intends the Federal Courts to develop a federal common law of remedies, including (but certainly not limited to) the imposition of punitive damages on the person responsible for the failure to pay claims in a timely manner.'*

"H. R. Rep. No. 801, 100th Cong., 2d Sess. p. 2, at 63 (1988) (emphasis added [in *Haywood*]).

"The Supreme Court, in *Ingersoll-Rand*, has now specifically held that the courts are authorized to award damages, *both extracontractual, and even punitive*, where the facts support them, even though they are not specifically provided for in ERISA. In doing so, it simply correctly carries out the intent of Congress in passing ERISA.

"*State courts*, with concurrent jurisdiction of ERISA actions, *likewise possess such authority*. In this case, the cause of action stated happens to be one specifically provided for in ERISA, so the trial court need not go beyond the Act itself to formulate a remedy for the wrong allegedly done the plaintiff. *Ingersoll-Rand*, of course, would authorize recovery even if the relief sought were not expressly provided for in the Act. Therefore, we reverse the judgment and remand the cause and permit the plaintiff to attempt to state a claim under § [1140].

"In recognizing that ERISA permits such actions, the Supreme Court of the United States acknowledged that the polestar of any legislation is legislative intent. The Congress of the United States could not have intended to strip from beneficiaries of pension and employee benefit plans all of the protections long afforded by state common law and not to provide a statutory replacement for those state common law protections. Certainly it would not have done so in the guise of passing legislation to protect the very persons whose rights were the focus of the legislation. The fact that the statutory rights bear many of the characteristics of the state remedies that the Act preempted is not unusual. In Alabama the legislature has adopted statutes providing remedies for medical and legal malpractice. Ala. Code 1975, § 6-5-480 et seq.; § 6-5-570 et seq. These statutory causes of action bear a striking resemblance to the common law actions they replaced. In specifically authorizing the courts to develop remedies not specifically provided for in ERISA, the Supreme Court now recognizes the possibility of recovery of tort-like damages in ERISA cases."

Haywood, 584 So. 2d at 1295-98. (Emphasis added except as noted.)

Since *Haywood* was decided, a number of courts have discussed *Ingersoll-Rand* and have reached varying con-

clusions as to its meaning—some cases concluding that it does *not* authorize extracontractual or punitive damages, see e.g., *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, —— U.S. ——, 113 S. Ct. 61 (1992); *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991); *Zimmerman v. Sloss Equipment, Inc.*, 835 F. Supp. 1283 (D. Kan. 1993); *Roberts v. Thorn Apple Valley, Inc.*, 784 F. Supp. 1538 (D. Utah 1992); and others concluding that *Ingersoll-Rand does* authorize such remedies; see, e.g., *East v. Long*, 785 F. Supp. 941 (N.D. Ala. 1992) (per Acker, J.); *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Midland Steel Prods. Co.*, 771 F. Supp. 860 (N.D. Ohio 1991); cf. *Lawrence v. Jackson Mack Sales, Inc.*, 837 F. Supp. 771 (S.D. Miss. 1992) (some species of extracontractual damages—but not punitive damages—are recoverable under ERISA). However, this Court still understands *Ingersoll-Rand* as it did when it released *Haywood*. Therefore, the Weemses' ERISA claims are not defective for the reason on which the trial court's summary judgment expressly rests, namely, that ERISA does not authorize recovery of punitive damages or of extracontractual damages. The judgment of the trial court, to the extent that it so held, is reversed.

III. Jury Trial

The resolution of the issue addressed in Part II, *supra*, also essentially disposes of the issue presented in the final portion of the partial summary judgment, that is, whether the Weemses have a right to a trial by jury on their ERISA claims. This conclusion follows, because the right to recover compensatory and punitive damages "leads inexorably to the right of trial by jury," as guaranteed by U.S. Const. amend. VII. *Haywood*, 584 So. 2d at 1298.

In opposition to this proposition, Jefferson-Pilot relies on *Ex parte Gurganus*, 603 So. 2d 903 (Ala. 1992) (per Houston, J., with one Justice concurring, five Justices

concurring in the result, and one Justice concurring in part). However, *Gurganus* held only that an action brought pursuant to § 1132(a)(1)(B),[1] to determine the insurer's right to cancel an ERISA-regulated plan, was equitable in nature, and, consequently, did not carry a right to a trial by jury. Although the author of *Gurganus* also suggested that Alabama courts are bound by the statutory construction employed in the Court of Appeals for the Eleventh Circuit, which holds that plaintiffs are not entitled to a jury trial on claims brought pursuant to § 1132(a)(1)(B), *Blake v. Unionmutual Stock Life Ins. Co. of America*, 906 F.2d 1525 (11th Cir. 1990), that view was shared by only one other Justice, and, consequently, does not represent the position of this Court or represent binding precedent.

On the contrary, the correct rule, briefly stated, is that "[t]his Court may rely on a decision of any federal court, but it is *bound* by the decisions of the United States Supreme Court." *Gurganus*, 603 So. 2d at 908 (Shores, J., concurring specially) (emphasis in original); see also *Amerada Hess Corp. v. Owens-Corning Fiberglass Corp.*, 627 So. 2d 367, 373 n.1 (Ala. 1993), *cert. denied*, —— U.S. ——, 114 S.Ct. 1610 (1994). This rule is especially applicable if Eleventh Circuit doctrine conflicts with the law as expressed in cases decided in the other circuits. *Id.* Cf. *Sullivan v. LTV Aerospace & Defense Co.*, 850 F. Supp. 202, 214 (W.D.N.Y. 1994) (ERISA plaintiff "seeking legal relief" is entitled under the Seventh Amendment to a jury trial); *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Midland Steel Prods. Co.*, 771 F. Supp. 860, 865 (N.D. Ohio 1991) (ERISA plaintiffs "seeking punitive or compensatory damages, remedies at law, . . . are entitled under the Seventh Amendment to a trial by jury");

---

[1] Section 1132(a)(1)(B) provides that "[a] civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, or to clarify his rights to future benefits under the terms of the plan."

McDonald v. Artcraft Electric Supply Co., 774 F. Supp. 29, 36 (D.D.C. 1991) (ERISA plaintiffs seeking "traditional legal relief" are entitled under the Seventh Amendment to a trial by jury); *Gangitano v. NN Investors Life Ins. Co.*, 733 F. Supp. 342 (S.D. Fla. 1990) (Seventh Amendment requires a jury trial in actions seeking legal relief, pursuant to § 1132(a)(1)(B); *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 882 (S.D.N.Y. 1990).

The trial court, to the extent it concluded that a plaintiff is never entitled to a jury trial on claims brought pursuant to § 1132(a)(1)(B), erred. Therefore, that portion of the partial summary judgment so holding is reversed.[1]

In summary, the judgment is affirmed to the extent it held that the state-law claims were preempted by ERISA. The judgment is reversed to the extent it held that ERISA does not authorize recovery of punitive damages or of extracontractual damages and to the extent it held that a plaintiff is never entitled to a jury trial on claims brought pursuant to § 1132(a)(1)(B). The judgment of the trial court is, therefore, affirmed in part and reversed in part. The cause is remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Hornsby, C. J., and Almon, Shores, Kennedy, and Ingram, JJ., concur.

Maddox and Houston, JJ., concur in part; concur in the result in part; and dissent in part.

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[1] We must reiterate that we express no opinion as to the validity of the *merits* of the Weemses' claims. Our discussion in this case must be construed as confined to the precise grounds on which the trial court expressly based its summary judgment. This approach is particularly appropriate in view of the fact that these grounds are the only ones fully developed in the parties' briefs.

HOUSTON, JUSTICE (concurring in part; concurring in the result in part; and dissenting in part).

I concur with that portion of the opinion that holds that the state law claims were preempted by ERISA. That holding is consistent with my understanding of the law since 1989. See *Health America v. Menton*, 551 So. 2d 235, 249-56 (Ala. 1989) (Houston, J., dissenting). I concur in the result as to that portion of the opinion that reverses the judgment to the extent that the opinion holds that ERISA does not authorize the recovery of punitive damages or damages in excess of those provided for by the contract. *Haywood v. Russell Corp.*, 584 So.2d 1291, 1298-99 (Ala. 1991) (Houston, J., concurring specially). I dissent from that portion of the majority's opinion that holds that the Weemses are entitled to a jury trial on claims brought pursuant to § 1132(a)(1)(13) [sic]. *Blake v. Unionmutual Stock Life Ins. Co. of America*, 906 F.2d 1525 (11th Cir. 1990); *Ex parte Gurganus*, 603 So.2d 903 (Ala. 1992).

Maddox, J., concurs.

APPENDIX B

IN THE SUPREME COURT OF ALABAMA

June 16, 1995

1920981

WILLARD WEEMS and JULIA WEEMS

v.

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC., *et al.*

(Lauderdale: CV-91-008)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

COOK, J.—Hornsby, CJ., Almon, Shores, Kennedy and Ingram, JJ., concur; Maddox and Houston, JJ., dissent.

APPENDIX C

IN THE CIRCUIT COURT
OF LAUDERDALE COUNTY, ALABAMA

Case Number CV-91-8

WILLARD WEEMS, *et al.*,
Plaintiffs,

v.

JEFFERSON-PILOT LIFE INSURANCE CO., INC., *et al.*,
Defendants.

ORDER

The Plaintiffs and the Defendant, Jefferson-Pilot Life Insurance Company, having filed cross-motions for partial summary judgment in this cause and this court having considered said motions, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. That the Plaintiffs' motion for partial summary judgment as to all Defendants is denied.

2. That the motion for partial summary judgment of the Defendant, Jefferson-Pilot Life Insurance Company, is hereby granted. Plaintiffs' state law claims for breach of contract and tort claims for bad faith, fraud, negligence, wantonness and willfulness are preempted pursuant to 29 U.S.C. 1144(a) and such claims are hereby dismissed with prejudice; Plaintiffs' claim under E.R.I.S.A. for extracontractual and/or punitive damages and Plaintiffs' jury demand are hereby stricken.

Further, this Court finds no just cause for delay in the entry of a final judgment in favor of the Defendant,

Jefferson-Pilot Life Insurance Company, on the Plaintiffs' state law contract and tort claims, claims for extracontractual and/or punitive damages and demand for a jury trial, and hereby expressly directs the entry of a final judgment in favor of said Defendant in accordance with Rule 54(b) of the Alabama Rules of Civil Procedure.

Done this the 16th day of March, 1993.

/s/ Larry Mach Smith
Circuit Judge

APPENDIX D

STATUTORY PROVISIONS

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

§ 409. Liability for breach of fiduciary duty.

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

* * * *

§ 502. Civil enforcement.

(a) Persons empowered to bring a civil action.

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c);

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title;

(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (l);

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A);

(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1), (A) to enjoin any act or practice which violates subsection (f) of section 101, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection; or

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion or the participant's pension benefit under such plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the

alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts.

* * * *

(e) Jurisdiction.

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 101(f)(1). State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

§ 510. Interference with protected rights.

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this title, section 3001, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or dismrimi-

nate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. The provisions of section 502 shall be applicable in the enforcement of this section.

Supreme Court, U.S.
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No. 95-209

IN THE

Supreme Court of the United States

October Term, 1995

JEFFERSON-PILOT INSURANCE COMPANY, INC.,
Petitioner,

v.

WILLARD WEEMS and JULIA WEEMS,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Willson Jenkins
Counsel of Record
Jester, Howard & Jenkins
117 Mobile Plaza
Florence, Alabama 35630
(205) 764-3941

Date: October 6, 1995

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this case is ripe for review.

2. Whether the State Court has subject matter jurisdiction of this action for breach of fiduciary duty and interference with ERISA protected rights under 29 U.S.C. 1132(A)(1)(b).

3. Whether ERISA authorizes the recovery of extra contractual damages under 29 U.S.C. 1132(A)(1)(b).

4. Whether the Plaintiffs are entitled to a trial by jury in State Court.

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II. The Alabama Supreme Court's interpretation of *Ingersoll Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478 (1990), is not clearly erroneous, so as to subvert any intention of this Court nor of Congress 5

III. This case can be held or remanded in light of one (1) of the issues to be decided in *Varity Corp. v. Howell*, #94-1471 (U.S. *Cert. granted* April 24, 1995) since *Varity* may have an impact on one of the underlying issues in the case *sub justi*, namely whether ERISA permits the individual plan participants to sue on their own behalf for alleged breaches of fiduciary duty 5

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IN THE

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No. 95-209

JEFFERSON-PILOT INSURANCE COMPANY, INC.,
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On Petition for Writ of Certiorari to the Supreme Court of Alabama

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW, JURISDICTION AND STATUTORY PROVISIONS INVOLVED

The Respondent accepts the Petitioner's statement of the opinion below, statement of jurisdiction and the statutory provisions involved.

STATEMENT OF THE CASE

This is an action under ERISA for an alleged breach of fiduciary duty, for interfering with a participant's ERISA rights, and for such other legal and equitable relief to which the plaintiff is entitled under ERISA, 29 U.S.C. 1132(A)(1)(b).

FACTS

In 1988, A.C. Johnson Trucking Company employed respondent, Willard Weems, as its "marketing manager". In that same year, Johnson Trucking Company began providing major medical, life and disability insurance for its employees through a policy underwritten and insured by Jefferson Pilot, Petitioner. This arrangement allowed Johnson Trucking Company employees to purchase coverage for their dependents through monthly payroll deductions.

Johnson Trucking Company failed to pay Jefferson Pilot the premiums due on several occasions, resulting in a lapse of plan coverage. Eventually, however, Johnson Trucking would "catch the payments up" and Jefferson Pilot would not only honor claims during the period of lapse, but would reinstate the coverage. No notice was ever given to any participant or beneficiary under the plan of the lapse in plan coverage.

In early 1990, Johnson Trucking Company once again became delinquent in its premium payments, although employee wages continued to be deducted. On April 23, 1990, Jefferson Pilot notified Johnson Trucking Company that it had not received the March premium, and further stated, that Johnson Trucking Company would "receive a confirmation of termination", absent receipt of the delinquent premiums within fifteen (15) days. Johnson Trucking Company never paid the premium; nevertheless, on May 5, 1990, Jefferson Pilot's "underwriting department" authorized a six (6) month plan renewal, even though the last premium payment had not been made since March, 1990. Before July 27, 1990, Jefferson Pilot contacted Johnson Trucking Company on at least one (1) more occasion regarding the delinquent premiums. On that date, however, having received no payment, Jefferson Pilot sent Johnson Trucking Company a letter stating that the insurance plan had been canceled retroactively to April 30, 1990. On

August 1, 1990, Johnson Trucking Company, for the first time, notified its employees of the lapse in plan coverage.

During the interim, on June 5, 1990, the Respondent, Willard Weems, suffered a heart attack and required emergency hospitalization. Jefferson Pilot, through its insurance plan notification procedures, was apprised of Weems' condition, and on three (3) separate occasions "certified" or approved his hospitalization through June 28, 1990. Weems initially incurred over Eighteen Thousand and No/100 Dollars ($18,000.00) in medical expenses. Before July 27, 1990, Jefferson Pilot paid in excess of Six Thousand and No/100 Dollars ($6,000.00) of Weems' expenses. After that date, however, Jefferson Pilot ceased paying the claim and in addition, successfully sought reimbursement for the amount it had previously paid from Weems' medical providers.

Moreover, Jefferson Pilot also received notification from other plan participants during the period of non-payment of plan premiums [April-June, 1990] regarding such inquiries as the proper place to send COBRA payments, yet at no time, did Jefferson Pilot inform any of the participants of the lapse or impending lapse in plan coverage. Jefferson Pilot, by its silence and misstatements to the Weems that their hospital stay was "approved" and directing other beneficiaries that COBRA payments be made to the employer, breached its fiduciary obligations to inform the participants, in a timely manner, of the lapse in plan coverage. Jefferson Pilot's contention to this Court that all of its actions were "well within its rights under the policy" is clearly inaccurate.

PROCEEDINGS BELOW

On January 4, 1991, the Weems filed suit in State Court against Johnson Trucking Company, alleging various claims under state law including fraud. Jefferson Pilot was added as a party defendant by amended complaint on April 16, 1991.

Jefferson Pilot sought removal of the action to the United States District Court for the Northern District of Alabama on grounds that the plaintiffs' claims were preempted under ERISA. The District Court remanded the action back to the Alabama State Court, having concluded the action was removed "untimely". Plaintiffs' amended complaint stated various causes of actions comprising them both under state law and ERISA. The State law claims were based upon the Alabama decision of *Newton v. United Chambers Insured Plans*, 45 So.2d 1147 (Ala. 1986) which requires timely notification to the participant of the termination of plan coverage by the insurance company. ERISA claims were asserted under 29 U.S.C. 1109; 29 U.S.C. 1132(A)(3); 29 U.S.C. 1132(A)(1)(b); 29 U.S.C. 1105(A)(1); 29 U.S.C. 1132(A)(3); and 29 U.S.C. 1104(A) and (B).

After discovery was completed, both parties moved for partial sumary judgment. The plaintiff moved for partial summary judgment on the liability of the defendants (Johnson Trucking Company and Jefferson Pilot) and the Defendant, Jefferson Pilot, sought to strike the plaintiffs' state law claims as being preempted by ERISA and moved to strike both the extra contractual request for relief and the jury demand. (R.29, 59-60, 76, 96.) The Trial Court denied the plaintiffs' motion for summary judgment and held that the state law claims were preempted by ERISA and that the rule announced in *Newton* was not otherwise saved as a law "regulating insurance" within the savings clause of 29 U.S.C. 1144(B)(2)(a). Plaintiffs appealed (R.105).

On May 5, 1995, the Alabama Supreme Court reversed the Trial Court's determination that the plaintiffs' ERISA claims are "defective for the reason on which the trial court's summary judgment expressly rests, namely, that ERISA does not authorize recovery of punitive damages or extra contractual damages. The judgment of the Trial Court, to the extent that it held so, is reversed." In addition, the Alabama Court held

that "to the extent it concluded that a plaintiff is never entitled to a jury trial on claims brought pursuant to 1132(A)(1)(b) [it] erred.

Jefferson Pilot then filed an application for rehearing, arguing *now* for the first time after it had lost part of the appeal, that the State Court lacks subject matter jurisdiction over the remaining ERISA claims for breach of fiduciary duty and interference with obtaining plan benefits. Jefferson Pilot did not argue in its application for rehearing that the Alabama Supreme Court should reconsider its ruling as to its awards of extra contractual damages are not possible nor that the plaintiff does not have a right to trial by jury.

On June 16, 1995, the Alabama Supreme Court overruled Jefferson Pilot's application for rehearing (without an opinion). On August 9, 1995, Jefferson Pilot filed its application for certiorari to this Court.

REASONS FOR DENIAL OF THIS WRIT OF CERTIORARI

The Court should not grant the Writ of Certiorari in this case given that:

1. There has been no award of extra contractual damages; the Respondents have not prevailed on any claim; neither the Trial Court nor the Alabama Supreme Court ruled upon the merits of the Respondents' claim; and there has been no underlying trial in this cause.

2. The Alabama Supreme Court's interpretation of *Ingersoll Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478 (1990), is not clearly erroneous, so as to subvert any intention of this Court nor of Congress.

3. This case can be held or remanded in light of one (1) of

the issues to be decided in *Varity Corp. v. Howell*, #94-1471 (U.S. *Cert. granted* April 24, 1995) since *Varity* may have an impact on one of the underlying issues in the case *sub justi*, namely whether ERISA permits individual plan participants to sue on their own behalf for alleged breaches of fiduciary duty.

ARGUMENTS

1. This case, in its current posture, is not ripe for review. There has been no judgment or order awarding extra contractual damages, either compensatory or punitive. There has been no judgment on the merits of the plaintiffs' claims in the lower courts. The only issue that appears to be ripe for review is the jury trial issue. Better posture in this case would be to resolve all issues after a determination has been made on the merits of the action, rather than proceeding in a "piecemeal" fashion. *See, Pacific Gas and Electric Co. v. State Energy Resources Cons. and Dev. Comm.*, 461 U.S. 190, 103 S.Ct. 1713 (1983). In addition, the other defendant, Johnson Trucking, may have the same or similar appeal grounds as Jefferson Pilot after a verdict.

The better procedure would be to deny certiorari and allow the Alabama Supreme Court to review this case in light of this Court's holding in *Varity Corp. v. Howell*, Case No.: 94-1471 (U.S. *Cert. granted*, April 24, 1995), since it may affect one of the issues that has never been raised prior to this brief, namely whether ERISA permits an individual participant to sue for a breach of fiduciary duty.

Furthermore, the hardship on both of the parties is minimized by waiting to review this case until a trial on the merits has been completed rather than proceeding through an interrogatory appeal. The pleadings and causes of action are less than clear and there has been no ruling on the merits of the

plaintiff's claims by the lower courts. The defendants may prevail on the merits, making an appeal unnecessary. The wisest course of action for this Court would be to either deny certiorari or hold this action and remand in light of *Varity*.

2. The Alabama Supreme Court, as a state court, does have concurrent subject matter jurisdiction of ERISA claims. 29 U.S.C. 1132(A)(1)(b). If an action includes claims that arise both under state and federal law, then the state court can, like a federal court, retain jurisdiction of the federal claims under either an ancillary or pendent jurisdiction. *Infra, Ex Parte Gurganus*, 603 So.2d 903, 908 (Ala. 1993) [Justice Shores concurring in result]. State courts have jurisdiction to entertain legal actions under 1132(A)(1)(b) if a participant pleads, and can prove that he is entitled to damages under a cognizable legal claim. *Ex Parte Gurganus*, 603 So.2d at 908 (Justice Shores concurring in result). Moreover, we note that the "interference claim" is a cause of action that arises under 29 U.S.C. 1140, which is the same type of claim that this Court reversed back to a Texas state court in *Ingersoll Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478 (1990). The remand order did not order the state court to dismiss the case for lack of subject matter jurisdiction.

It is also worthy to note that the defendants have actively litigated in state court under these various ERISA claims for over three and one-half (3½) years and not once, have they raised the issue of the "lack of subject matter jursidiction" until they received a partially adverse ruling. That ruling also was, in part, favorable to the petitioners. The petitioners wish to accept subject matter jurisdiction from the State Court on the rulings where it prevails but does not wish to accept jurisdiction on the issues it lost. In a sense, Jefferson Pilot wants to "have its cake and eat it too".

3. Awarding compensatory and punitive damages, when the facts support such an award, does not violate a Congressional intent when ERISA was established. In a case where a defendant has knowingly and intentionally breached its obligation to inform plan beneficiaries of the cancellation of plan coverage in a timely manner and in particular where this Petitioner had direct contact with the Respondent on at least three (3) occasions, agreed to pay and actually paid, one-third (1/3) of his benefits and then unilaterally decides to back date the termination of coverage to prevent further payment is a breach of fiduciary obligation at its worst, demanding punishment and deterrence so that fiduciary obligations will be adhered to. Congress, when enacting ERISA, would never have passed such a "sweeping" form of legislation under the "guise" of protecting plan beneficiaries and removed all incentives for insurance companies to adhere rigidly to fiduciary standards. Punitive and extra contractual damages are appropriate in some instances under ERISA. *See, e.g. East v. Long*, 785 F.Supp. 941 (N.D. Ala. 1992); *International Union United Automobile Aerospace and Agricultural Implement Workers v. Midland Steel Prod. Co.*, 771 F.Supp. 860 (N.D., Ala. 1991).

The ability of the courts to entertain and develop a body of federal common law as to damages under ERISA was reinforced in 1988 when the Education and Labor Committee of the House of Representatives' report to Congress emphasized that

> Congress intended for courts to develop a federal common law with respect to employee benefit plans including the development of appropriate remedies, even if they are not specifically enumerated in section 502[U.S.C. 1132] of ERISA.

The House Committee went on to note:

> In cases in which, for instance, facts and circumstances show that the processing of legitimate benefit claims has been unreasonable, delayed or totally disregarded by an insurer, an employer, a plan of ERISA administrator, or a plan committee intends Federal Courts to develop a federal common of remedies, including (but certainly not limited to) the one imposition of punitive damages on the person responsible for the failure to pay claims in a timely manner. H.R. Rep. No. 801, 100th Congress, 2d Sess. p.2, at 63 (1988).

4. The Plaintiff is entitled to a jury trial on the remainig ERISA issues pursuant to 29 U.S.C. 1132(A)(1)(b). The Alabama Supreme Court held that the remaining claims, primarily, were legal in nature and that relief under ERISA 502(A)(1)(b); 29 U.S.C. 1132(A)(1)(b) permits either the plaintiff or defendant to request a jury trial when the issue is at controversy. The Alabama Supreme Court held that because of the recovery of compensatory and punitive damages was possible that this "leads inexorably to the right to trial by jury" as guaranteed by the United States Constitution, amend. VII. *Weems v. Jefferson Pilot Life Insurance Co.*, ____ So.2d ____ (Ala. 1995).

Moreover, since this action is pending in State Court and not federal, there is nothing in the federal statute that would prohibit the State Court from granting a jury trial if the state constitution or state statute provides for the action to be tried by a jury. Article I, sec. 11 of the Alabama Constitution provides "[T]hat the right of trial by jury shall remain inviolate". Alabama's courts have construed this provision to mean that in those actions which are legal in nature as opposed to equitable, either party has a right to have its case heard and tried by a jury. *See, Finance, Inv. & Rediscount Co. v. Wells,*

409 So.2d 1341 (Ala. 1981). The Alabama Supreme Court considers that claims tried under 29 U.SC. 1132(A)(1)(b) on account of a breach under the terms of the plan to be primarily a "legal" action, entitling the plaintiff or defendant to a jury trial, if so demanded.[1] *Weems v. Jefferson Pilot*, ____ So.2d. ____ (Ala. 1995); *Ex Parte Gurganus*, 603 So.2d at 908 (Justice Shores concurring in result).

In addition, an advisory jury is always possible if the right is not guaranteed by statute or the constitution under both the Federal and Alabama Rules of Civil Procedure. See Rule 39(c) of the F.R.C.P. and A.R.C.P.

CONCLUSION

In conclusion, this case, in its current posture, is not ripe for review. Many of the issues that have been appealed have not been finally decided upon by the state court and are too speculative at this juncture. The better posture would be to either deny certiorari and/or remand this action, in light of this Court's decision in *Varity Corp. v. Howell.*

---

[1]The Petitioner was correct in pointing out that when the case is tried in federal court, federal courts are divided as to whether a jury trial is possible under 502(A)(1)(b); 29 U.S.C. 1132(A)(1)(b) for an action to enforce rights under the terms of a plan or to recover benefits due under the terms of the plan. *See, e.g., Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003 (4th Cir.); *Blake v. Unimutal Stock Life Insurance Co.*, 906 F.2d 1525 (11th Cir. 1990). For the opposing view, *see, e.g., Sullivan v. L.T.V. Aerospace and Defense Co.*, 850 F.Supp. 202 (W.D.N.Y. 1994); *McDonald v. Artcraft Electric Supply Co.*, 744 F.Supp. 29 (D.D.C. 1991).

For the reasons stated herein, certiorari should be denied or held and disposed of, in light of this Court's decision in *Varity Corp.*

Respectfully submitted,

Willson Jenkins
Counsel of Record
Jester, Howard & Jenkins
117 Mobile Plaze
Florence, Alabama 35630
(205) 764-3941

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,

Petitioner,

v.

WILLARD WEEMS and JULIA WEEMS,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

BRIEF *AMICI CURIAE* ON BEHALF OF AMERICAN COUNCIL OF LIFE INSURANCE, HEALTH INSURANCE ASSOCIATION OF AMERICA AND ALLIANCE FOR MANAGED CARE IN SUPPORT OF PETITION FOR CERTIORARI

Of Counsel:

PHILLIP E. STANO
AMERICAN COUNCIL OF LIFE INSURANCE
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

* WILLIAM J. KILBERG
PAUL BLANKENSTEIN
THEODORE J. BOUTROUS, JR.
JOHN K. BUSH
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
WASHINGTON, D.C. 20036
(202) 955-8500

Attorneys for Amici Curiae
* *Counsel of Record*

[Additional counsel listed on inside front cover]

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208

B. MICHAEL HERMAN
HEALTH INSURANCE
ASSOCIATION OF AMERICA
555 13th Street, N.W.
Washington, D.C. 20004

ROBERT J. STILLMAN
AETNA
151 Farmington Avenue
Hartford, Connecticut 06156

JOSEPHINE A. MARCHETTI
CIGNA CORPORATION
900 Cottage Grove Road, W-26
Hartford, Connecticut 06152

PATRICIA A. MCEVOY
METRAHEALTH INSURANCE COMPANY
450 Columbus Boulevard
5 North Building
Hartford, Connecticut 06183

BRIAN HARMS
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
751 Broad Street
23 Plaza
Newark, New Jersey 07102

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No. 95-

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,

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v.

WILLARD WEEMS and JULIA WEEMS,

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Alabama

BRIEF *AMICI CURIAE* ON BEHALF OF AMERICAN COUNCIL OF LIFE INSURANCE, HEALTH INSURANCE ASSOCIATION OF AMERICA AND ALLIANCE FOR MANAGED CARE IN SUPPORT OF PETITION FOR CERTIORARI

The American Council of Life Insurance ("ACLI"), the Health Insurance Association of America ("HIAA") and the Alliance for Managed Care ("AMC") respectfully submit this brief in support of the petition for a writ of certiorari

filed by Jefferson-Pilot Life Insurance Company, Inc. ("Jefferson-Pilot") in this case.[1]

INTERESTS OF THE *AMICI*

ACLI is the largest life insurance trade association in the United States, with 606 member life insurance companies. HIAA is the largest health insurance trade association in the United States, representing approximately 230 commercial health insurers, which provide health insurance coverage to over 50 million Americans. AMC is a coalition of four of the country's largest managed care companies—Aetna, CIGNA, The Prudential, and MetraHealth (the recent merger of the Travelers and Metropolitan health insurance companies)—which provide health insurance for over 60 million Americans in twenty-four states. Together, the members of the *amici* organizations have issued the overwhelming majority of life and health insurance currently in force in the United States.

Members of ACLI, HIAA and AMC play an important role in providing insurance benefits to millions of American workers through employee welfare benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Insurance companies—including many members of ACLI, HIAA, and AMC—fund the vast majority of the employee welfare benefit plans in this country, providing insurance coverage to over 82 million Americans under ERISA-regulated employee welfare benefit plans. In addition, many members of ACLI, HIAA and AMC are responsible for administering their funded plans, as well as the majority of employer self-insured health programs in this country.

Amici submit that certiorari should be granted on the first question presented in this case and that the decision below should be summarily reversed because the Alabama

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[1]Letters reflecting written consent of the parties to the filing of this brief have been filed with the Clerk of the Court.

Supreme Court lacked jurisdiction over plaintiffs' claims under ERISA for breach of fiduciary duty and interference with ERISA-protected rights. However, in the event that this Court does not reverse on jurisdictional grounds, the Court should grant certiorari on the second question presented to remove any possible doubt concerning whether extracontractual damages, punitive or otherwise,[2] are available under ERISA.

Amici are concerned that the Alabama Supreme Court's decision in this case, if left uncorrected by this Court, will seriously undermine the ERISA civil enforcement scheme enacted by Congress. The Alabama court's decision significantly increases the risks to insurers that fund and administer employee welfare benefit plans by introducing into ERISA the highly unpredictable remedies of punitive damages and other subjective extracontractual damages such as "mental anguish" and "pain and suffering." Insurance companies depend upon predictability in the law to assess risks and to accumulate sufficient reserves for payment of claims, but the decision below injects enormous uncertainty and inconsistency in the law of ERISA. The inevitable consequence of the erroneous ruling of the Alabama court is to drive up the cost—and price—of employee benefit and welfare plans, in contradiction to Congressional intent.

Amici believe that their members' exposure to the enormous uncertainties created by extracontractual damages under ERISA makes them particularly well situated to address the important issues presented by this case. One or more of the *amici* groups has filed an *amicus* brief in

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[2]The term "extracontractual damages" is used to refer to all damages, both punitive and compensatory, other than "contractual damages for loss of plan benefits," *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 138 (1985). "Compensatory damages," as used in this brief, refers to non-punitive extracontractual damages, such as damages for "mental anguish," "pain and suffering" and lost wages.

virtually all of the significant ERISA and punitive damages cases decided by this Court during the past decade. ACLI, HIAA and AMC believe that their participation as *amici* is similarly appropriate here in order to assist the Court in determining whether to grant certiorari.

REASONS FOR GRANTING THE WRIT

Even assuming that the Alabama state courts below have jurisdiction over the ERISA claims in this case,[3] certiorari should be granted in this case because the decision below directly contradicts this Court's precedents establishing that extracontractual damages may not be recovered under ERISA. In holding that such damages are available, the Alabama Supreme Court's reasoning consists largely of quoting extensively from its own opinion in *Haywood* v. *Russell Corp.*, 584 So. 2d 1291 (Ala. 1991), which relies, in turn, on a misreading of *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133 (1990). According to the Alabama court, the "holding" of *Ingersoll-Rand* is "that state and federal 'courts are authorized to award damages, *both extracontractual, and even punitive*, where the facts support them. . . . though they are not specifically provided for in ERISA.'" Pet. App. 9a (quoting *Haywood*, 584 So. 2d at 1297) (emphasis in original).

The Alabama Supreme Court's interpretation of *Ingersoll-Rand* is flatly wrong. This Court's decisions in *Massachusetts Mutual Life Insurance Co.* v. *Russell*, 473 U.S. 134 (1985); *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41 (1987); and *Mertens* v. *Hewitt Associates*, 113 S. Ct. 2063 (1993), establish that the exclusive civil remedies

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[3]Although *amici* agree with petitioner that the Alabama Supreme Court erroneously held that Alabama state courts have jurisdiction to hear plaintiffs' ERISA claims, *see* Petition for Certiorari at 9-11, this brief will focus primarily on addressing the Alabama Supreme Court's ruling that extracontractual damages are available under ERISA because of the significance of that ruling to the insurance industry.

under ERISA for plan participants and beneficiaries are the causes of action expressly listed in ERISA § 502(a), none of which authorize the award of extracontractual damages. As the Alabama court's decision demonstrates, however, the *Ingersoll-Rand* opinion contains language that has been misconstrued by lower courts as endorsing the availability of extracontractual damages under ERISA. Accordingly, if this Court does not summarily reverse on jurisdictional grounds, it should grant certiorari, to make it clear that compensatory and punitive damages are not available to ERISA-plan participants and beneficiaries, and to send a strong signal that the Court will not tolerate lower court efforts to evade Congress' intent concerning the statute's remedies.

If allowed to stand, the Alabama Supreme Court's decision would directly undermine a primary purpose of ERISA, which was to establish a uniform and consistent legal framework for the administration of employee benefit plans. In excluding extracontractual damages from the remedies available to plan participants and beneficiaries, Congress sought to establish a civil enforcement scheme without the uncertainties associated with punitive damages and other extracontractual legal remedies, thereby reducing the expenses of administering employee benefit plans and creating more incentive for employers to establish such plans for their employees. The decision below threatens to destroy the carefully crafted enforcement structure enacted by Congress and upset the balance struck by Congress between "'the primary [ERISA] goal of benefitting employees and the subsidiary goal of containing pension costs.'" *Mertens*, 113 S. Ct. at 2072 (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 515 (1981)).

I. THIS COURT SHOULD GRANT CERTIORARI TO ELIMINATE THE POSSIBILITY THAT LOWER COURTS THAT DISAGREE WITH THIS COURT'S ERISA JURISPRUDENCE WILL MISREAD *INGERSOLL-RAND* TO PERMIT THE AWARD OF COMPENSATORY AND PUNITIVE DAMAGES UNDER ERISA

A. *Ingersoll-Rand* Remains Subject To Misinterpretation By The Lower Courts

The decision below is based upon a fundamentally wrong interpretation of *Ingersoll-Rand*. Certiorari should be granted to correct the Alabama Supreme Court's erroneous holding that ERISA supports the award of extracontractual damages and thereby to preclude other lower courts from following that decision.

In *Ingersoll-Rand*, the plaintiff brought suit in Texas state court seeking compensatory and punitive damages on state common law claims alleging that his employer fired him "to avoid making contributions to his pension fund." 498 U.S. at 135. The Texas Supreme Court held that the plaintiff's claims were not preempted by ERISA because the plaintiff was seeking "lost future wages, mental anguish and punitive damages" rather than "pension benefits." *Id.* at 136. This Court, however, reversed, holding that the state law claims were expressly preempted by § 514(a) of ERISA because the claims "relate[d] to" an employee benefit plan. *Id.* at 140. In addition, the Court held the claims preempted by ERISA because they "conflict[ed] directly" with the ERISA cause of action under § 502(a) for violation of § 510, which "protects plan participants from termination motivated by an employer's desire to prevent a pension from vesting." *Id.* at 143. At the end of the *Ingersoll-Rand* opinion, the Court observed:

> Not only is § 502(a) the exclusive remedy for vindicating § 510-protected rights, but there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek "pension benefits." It is clear that the relief requested here is well within the power of federal courts to provide.

> Consequently, it is no answer to a pre-emption argument that a particular plaintiff is not seeking recovery of pension benefits.

Id. at 145.

The Alabama Supreme Court, both in this case and in *Haywood*, has badly misread the above-quoted paragraph from *Ingersoll-Rand* to mean that this Court has given its blessing to awards of punitive damages and other extracontractual damages under ERISA. According to the Alabama court, because the *Ingersoll-Rand* plaintiffs had sought extracontractual damages under the state law claims held to be preempted by ERISA, this Court's statement that "the relief requested . . . is well within the power of the federal courts to provide" establishes that the extracontractual damages sought in *Ingersoll-Rand* are recoverable under ERISA.[4]

At one time, the Alabama Supreme Court was not alone in its misreading of *Ingersoll-Rand*.[5] Indeed, both petitioners and the United States argued in *Mertens* that *Ingersoll-Rand* supported the availability of extracontractual

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[4]Indeed, in its decision below, the Alabama Supreme Court reiterated its view that this Court's "'holding'" in *Ingersoll-Rand* that extracontractual damages are available under ERISA was "'unanimous and unequivocal. No reasonable person can misunderstand it, although one might disagree with it. In our view, it comes as no surprise.'" Pet. App. 13a (quoting *Haywood*, 584 So. 2d at 1296).

[5]Some courts had read *Ingersoll-Rand* to recognize extracontractual damages under ERISA. *See, e.g., McDonald* v. *Artcraft Electric Supply Co.*, 774 F. Supp. 29, 32 (D.D.C. 1991); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America* v. *Midland Steel Products Co.*, 771 F. Supp. 860, 863 (N.D. Ohio 1991); *Blue Cross & Blue Shield of Alabama* v. *Lewis*, 753 F. Supp. 345, 347 (N.D. Ala. 1990).

damages under ERISA. *See* Brief for the Petitioners at 22 (arguing that in *Ingersoll-Rand* "the Court concluded that the remedial provisions of section 1132 [ERISA § 502] are broad enough to encompass remedies which are *not* specifically enumerated") (emphasis in original) and Brief for the United States as Amicus Curiae Supporting Petitioners at 14 (arguing that the *Ingersoll-Rand* dicta supported interpretation of § 502(a)(3) to authorize extracontractual damages), *Mertens* v. *Hewitt Assocs.*, 113 S. Ct. 2063 (1993) (No. 91-1671).[6]

This Court in *Mertens* rejected those arguments and squarely held that extracontractual damages are not available under § 502(a)(3) of ERISA. 113 S. Ct. at 2068-72. But the *Mertens* decision did not expressly address the *Ingersoll-Rand* dicta relied upon by the Alabama Supreme Court in this case. As demonstrated by the Alabama Supreme Court's decision here, *Ingersoll-Rand* can be exploited by those lower courts that disagree with this Court's general ERISA jurisprudence to reach a

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[6]Prior to *Mertens*, some courts had already rejected the view that *Ingersoll-Rand* established a right to extracontractual damages under ERISA. For example, the Eleventh Circuit correctly concluded:

> The Supreme Court [in *Ingersoll-Rand*] was stating that federal law provides relief for ERISA actions other than those that seeks to recover pension benefits. . . . The Supreme Court . . . [was] not holding that the specific ***remedies*** . . . sought under state law [by the *Ingersoll-Rand* plaintiffs] are necessarily the remedies that will be afforded . . . under ERISA § 502.

McRae v. *Seafarers' Welfare Plan*, 920 F.2d 819, 821 n.7 (11th Cir. 1991) (emphasis in original); *see also Medina* v. *Anthem Life Ins. Co.*, 983 F.2d 29, 32 (5th Cir.); *cert. denied*, 114 S. Ct. 66 (1993); *Harsch* v. *Eisenberg*, 956 F.2d 651, 660 (7th Cir.), *cert. denied*, 113 S. Ct. 61 (1992).

result wholly at odds with what this Court has said ERISA means.

For example, in the decision below, the Alabama Supreme Court quite candidly expressed its "'dissatisfaction with . . . [this] Court's broad interpretation of the preemption provisions of ERISA,'" Pet. App. 13a (quoting *Haywood*, 584 So. 2d at 1296), and repeated its belief that this Court's "'construction of the preemption provisions of ERISA, without a recognition of some rights and remedies to take the place of preempted state rights and remedies, went beyond what the Congress intended,'" *id.* 13a-14a. There is thus little surprise in the Alabama Supreme Court's holding that extracontractual damages are available under ERISA, even though that ruling flies in the face of *Mertens*, apparently yet another ERISA decision of this Court with which the Alabama Supreme Court disagrees.

Accordingly, this Court should grant certiorari to eliminate the opportunity for lower courts to use *Ingersoll-Rand* as a vehicle for disregarding this Court's ERISA teachings and to make clear that extracontractual damages are not available under ERISA.

B. The Decision Below Cannot Be Squared With This Court's ERISA Precedents

The decision below is indefensible in light of this Court's ERISA precedents. Plaintiffs' ERISA claims expressly invoke §§ 404(a), 404(b), 405(a)(1), 405(a)(3), 409, 502(a)(1)(B), and 502(a)(3) of ERISA,[7] Pet. App. 4a, and implicitly rely on § 510.[8] None of these statutory

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[7]29 U.S.C. §§ 1104(a), 1104(b), 1105(a)(1), 1105(a)(3), 1109, 1132(a)(1)(B), 1132(a)(3).

[8]29 U.S.C. § 1140 (prohibiting interference with protected rights). Plaintiffs assert that Jefferson-Pilot "'interfered with [their] rights to receive ERISA benefits.'" Pet. App. 9a (quoting the complaint).

provisions provide any basis for recovery of extracontractual damages in this case, as demonstrated by a series of decisions rendered by this Court both prior to and after *Ingersoll-Rand*.

Any argument that extracontractual relief is available under §§ 404(a), 404(b), 405(a)(1), 405(a)(3), 409 or 510 should be precluded by this Court's decisions recognizing that § 502(a)'s express terms provide the exclusive remedies for civil enforcement of ERISA. As the Court observed in *Russell*, "[t]he six carefully integrated civil enforcement provisions found in § 502(a) . . . provide strong evidence that Congress did ***not*** intend to authorize other remedies that it simply forgot to incorporate expressly." 473 U.S. at 146 (emphasis in original).[9] The Court adhered to this view in *Pilot Life*, concluding that § 502(a) is "the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits," 481 U.S. at 52. Thus, if plaintiffs have any basis for extracontractual damages, the right to such relief must be found in one of the provisions of § 502(a) on which they rely—namely § 502(a)(1)(B) or § 502(a)(3).

Russell makes clear, however, that the relief under § 502(a)(1)(B) does *not* include extracontractual damages. That provision "says nothing about the recovery of extracontractual damages." *Id.* Rather, § 502(a)(1)(B) authorizes a beneficiary or participant only "to recover accrued benefits, to obtain a declaratory judgment that she is entitled to benefits under the provisions of the plan contract, and to enjoin the plan administrator from improperly refusing to pay benefits in the future." *Id.* at 147.

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[9]In *Russell*, the Court specifically held that Section 409 does not establish a right to extracontractual damages for participants and beneficiaries. 473 U.S. at 144.

Similarly, two years ago in *Mertens*, the Court held that extracontractual damages—whether compensatory or puntive—may not be recovered as "equitable relief" under § 502(a)(3). 113 S. Ct. at 2068. In *Mertens*, the Court held that the only remedies available under § 502(a)(3) are "those categories of relief that were ***typically*** available in equity . . . ." 113 S. Ct. at 2069 (emphasis in original). Compensatory damages, the Court said, "are, of course, the classic form of ***legal*** relief." *Id.* at 2068. And even the dissent agreed that punitive damages were not available under § 502(a)(3). *Id.* at 2076 (White, J., dissenting); *see also Tull* v. *United States*, 481 U.S. 412, 422 & n.7 (1987).

Thus, there is simply no principled basis in *Russell, Pilot Life* and *Mertens* for the Supreme Court of Alabama to hold that plaintiffs may pursue extracontractual damages. Nevertheless, as the Alabama Supreme Court's decision demonstrates, the *Ingersoll-Rand* dicta can be used to muddy the otherwise clear line of decisions foreclosing such relief. Review by this Court is warranted to clarify this area of the law and to remove any doubt that ERISA precludes plan participants and beneficiaries from recovering compensatory and punitive damages.

II. IF LEFT UNCORRECTED, THE ALABAMA SUPREME COURT'S DECISION WILL DIRECTLY UNDERMINE THE INTENT OF CONGRESS TO CONTAIN INSURANCE AND PENSION COSTS UNDER ERISA

According to the Alabama Supreme Court, its holding that extracontractual damages are available under ERISA "'simply carries out the intent of Congress in passing ERISA.'" Pet. App. 15a (quoting *Haywood*, 584 So. 2d at 1297). The Alabama court reasoned that such damages must be available to ERISA-plan participants and beneficiaries because they are "'the very persons whose rights were the focus of the legislation.'" Pet. App. 16a (quoting *Haywood*, 584 So. 2d at 1298).

Although the Alabama Supreme Court is correct that ERISA was intended to protect the rights of ERISA-plan

participants and beneficiaries, Congress also sought to fashion legal rules to contain the costs of funding and administering employee benefit plans and thus further the "public interest in encouraging the formation of . . . [such] plans." *Pilot Life*, 481 U.S. at 54. In so doing, Congress struck a balance between the "'primary [ERISA] goal of benefitting employees and the subsidiary goal of containing pension costs.'" *Mertens*, 113 S. Ct. at 2072 (quoting *Alessi*, 451 U.S. at 515). Congress "resolved innumerable disputes between powerful competing interests—not all in favor of potential plaintiffs." *Id.* at 2071.

The balance struck by Congress on the issue of extracontractual damages was to preclude the award of such damages to ERISA-plan participants and beneficiaries. Thus, "there is a stark absence—in the statute itself and in its legislative history—of any reference to an intention to authorize the recovery of extracontractual damages." *Russell*, 473 U.S. at 148.

Congress certainly had a legitimate basis to preclude the award of extracontractual damages in suits brought by ERISA-plan participants and beneficiaries. Punitive damages, in particular, are a dire threat to the careful balance struck by Congress when it enacted ERISA. This Court has recognized that "[p]unitive damages pose an acute danger of arbitrary deprivation of property," *Honda Motor Co., Ltd.* v. *Oberg*, 114 S. Ct. 2331, 2340 (1994), and has expressed "concern about punitive damages that 'run wild.'" *Pacific Mutual Life Ins. Co.* v. *Haslip*, 499 U.S. 1, 18 (1991). "'[P]unitive damages are a powerful remedy which itself may be abused, causing serious damage to public and private interests and moral values.'" *Id.* at 18 n.8 (quoting David Owen, *The Moral Foundations of Punitive Damages*, 40 Ala. L. Rev. 705, 739 (1989)). Punitive damage jury instructions "typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." *Honda*, 114 S. Ct. at 2340-41. As a result, "juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the

actual harm caused." *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974); *accord City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 270-71 (1981) ("The impact of such a windfall recovery is likely to be both unpredictable and, at times, substantial.").

The Alabama judicial system, which produced the decision below, aptly demonstrates the serious problems of punitive damages that Congress sought to avoid in enacting ERISA. Alabama state courts have earned a nationwide reputation for punitive damage awards that "grow thick and wild." G. Jaynes, *Where The Torts Blossom*, Time, Mar. 20, 1995, at 38. Indeed, in one six-month period last year, from March through August 1994, Alabama juries went on a frenzy, dispensing six eight-digit punitive damage awards of $50,000,000, $33,000,000, $25,000,000, $22,750,000, $15,000,000, and $10,000,000 for a total of over $155,000,000. *See* Brief *Amicus Curiae* of The Alabama Business Council in *BMW of North America, Inc.* v. *Gore*, U.S. 94-896 (filed Mar. 23, 1995). This trend of awards has continued in 1995. For example, in August, an Alabama jury imposed $25,000,000 in punitive damages against The Prudential for alleged deceptive sales practices in issuing a $25,000 variable life-insurance policy. *See Insurer-Lawsuit Damages*, The Wall Street Journal, Aug. 31, 1995, at A3.

The explosion of punitive damage awards is also reflected in the judgments affirmed by the Alabama Supreme Court. *See generally* Brief *Amici Curiae* of Life Insurance Company of Georgia, et al., at 14-16, 4a-23a, in *BMW*. For example, in *Northwestern Mutual Life Insurance Co.* v. *Sheridan*, 630 So. 2d 384 (Ala. 1993), the Alabama Supreme Court affirmed a remitted punitive damages award of $12,463,624 against an insurance company on a state common law "claim of negligence and/or wantonness" after holding that this claim was not preempted by ERISA. *Id.* at 387, 394; *see also HealthAmerica* v. *Menton*, 551 So. 2d 235 (Ala. 1989); *cert. denied*, 493 U.S. 1093 (1990) (affirming a $1,797,588 punitive damages award against a health maintenance organization on a state common law claim held not to be preempted by ERISA). And following on the

heels of its *BMW* decision,[10] the Alabama Supreme Court only a few months ago upheld in a business fraud case a remitted punitive damages award of $15,000,000. *Duck Head Apparel Co.* v. *Hoots*, Nos. 1931146, 1931171, 1995 WL 64270 *6 (Ala. Feb. 17, 1995). The prospect of these mammouth and unpredictable punitive damages awards certainly justifies the decision of Congress to exclude the punitive damages remedy from the ERISA civil enforcement scheme.

Moreover, Congress had good reason to exclude other forms of extracontractual damages, especially the sort of "mental anguish" damages sought here, from the panoply of remedies available under ERISA. "Mental anguish" damages have long been recognized as being subject to manipulation and highly uncertain measurement: "[t]ranslating pain and anguish into dollars can, at best, be only an arbitrary allowance . . . ." *Seffert* v. *Los Angeles Transit Lines*, 56 Cal. 2d 498, 511 (1961) (Traynor, J., dissenting) (quoting McCormick, *Damages* § 88, pp. 318-19); *see also Consorti* v. *Armstrong World Industries, Inc.*, Nos. 94-7501, 857, 1995 WL 507557, at *6 (2d Cir. Aug. 28, 1995) ("compensation for suffering can be accomplished only in a symbolic and arbitrary fashion"). "[B]ecause no objective criteria exist for valuing these damages, they may vary widely and become astronomically high." Note, Nancy L. Manzer, *1986 Tort Reform Legislation: A Systematic Evaluation of Caps on Damages and Limitations on Joint and Several Liability*, 73 Cornell L. Rev. 628, 631-32 (1988). In the *Duck Head* case, the Alabama Supreme Court sustained $3,500,000 in "mental anguish" damages awarded to three salesmen who sued their former employer for lost sales commissions. *See Duck Head*, 1995 WL 64270, at *17. "Although the nonquantifiable nature of intangible injuries creates obvious compensation problems, these problems are not unique to such injuries." Stanley Ingber, *Rethinking Intangible*

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[10] *BMW of N. Am., Inc.* v. *Gore*, 646 So. 2d 619 (Ala. 1994), *cert. granted*, 115 S. Ct. 932 (1995) (No. 94-896).

Injuries: A Focus on Remedy, 73 Calif. L. Rev. 772, 779 (1985). "For example, damages for lost future wages, often viewed as tangible, economic losses, are also uncertain and a matter of conjecture" regarding numerous issues, including what jobs the plaintiff would have held and what salaries he would have received. *Id.*

The uncertainties associated with extracontractual damages have a serious impact on the insurance industry, which is particularly dependent on predictability in the law. As the Court has observed, the business of insurance

> depend[s] on the accumulation of large sums to cover contingencies. The amounts set aside are determined by a painstaking assessment of the insurer's likely liability. Risks that the insurer foresees will be included in the calculation of liability, and the rates or contributions charged will reflect that calculation. The occurrence of major unforeseen contingencies, however, jeopardizes the insurer's solvency and, ultimately, the insureds' benefits. Drastic changes in the legal rules governing pension and insurance funds, like other unforeseen events, can have this effect.

Los Angeles Department of Water & Power v. *Manhart*, 435 U.S. 702, 721 (1978); *see also Consorti*, 1995 WL 507557, at *7 ("Widely varying jury verdicts make it difficult for risk bearers to structure their behavior to efficiently manage risk."). The Alabama Supreme Court's decision here creates precisely the type of unforeseen risk to pension and insurance funds that Congress sought to minimize when it enacted ERISA.

Moreover, to the extent that extracontractual damages are recoverable directly from ERISA plans, such damages may upset the plan's financial calculations, "leaving fewer funds available to pay the claims of beneficiaries" and "requiring actuarial adjustments, since such a judgment [for extracontractual damages] will not have been a factor in the plan's projections." *Cromwell* v. *Equicor-Equitable HAC Corp.*, 944 F.2d 1272, 1279 (6th Cir. 1991) (Suhreinrich, J., concurring), *cert. dismissed*, 113 S. Ct. 2 (1992).

"Thus, the assessment of . . . judgments [of extracontractual damages] against a plan may reduce the amount available to the plan's beneficiaries and increase administrative costs." *Id.*; *see also Barnes Hosp.* v. *Sanus Passport/Preferred Servs., Inc.*, 809 F. Supp. 725, 728 (E.D. Mo. 1992) (extracontractual damages "would produce more than a 'tenuous, remote, and peripheral' effect on the plan" by rendering it liable for amounts "far in excess of the limits set forth in the plan").

Notwithstanding the serious threat that extracontractual damages pose to the stability of employee welfare benefit plans and the insurance industry in general, the Alabama Supreme Court has taken upon itself to "develop a body of federal common law to govern issues in ERISA actions not covered by the act itself," Pet. App. 11a (quotation omitted), including "develop[ing] remedies beyond those expressly provided by ERISA," Pet. App. 12a. But this is precisely what Congress sought to prohibit states from doing when it reversed the general rule that state courts must enforce federal rights and specifically gave exclusive jurisdiction to federal courts over all claims under ERISA except for a very narrow category of cases.[11] *See generally American Airlines, Inc.* v. *Wolens* 115 S. Ct. 817, 825 (1995) (ERISA "channel[s] civil actions into federal courts"). Congress' obvious concern was that states like Alabama with an eccentric vision of how the common law should develop would impose their parochial concerns and policy choices on a federal statutory regime that must

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[11]Section 502(e)(1) of ERISA provides: "Except for actions under . . . [§ 502(a)(1)(B)], the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter. . . ." 29 U.S.C. § 1132(e)(1). Under § 502(a)(1)(B), state courts have concurrent jurisdiction only over claims for recovery of benefits due "under the terms of [the] plan," enforcement of participants' rights "under the terms of the plan," or clarification of participants' rights to future benefits "under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).

be uniform in order to function effectively. *Cf. Alessi*, 451 U.S. at 523 (Congress "meant to establish pension plan regulation as exclusively a federal concern").

If left uncorrected, the Alabama Supreme Court's decision will create an ERISA system in Alabama, as well as in any other jurisdictions that might choose to follow the erroneous decision below, in which extracontractual damages may be allowed to flourish, as plaintiffs who cannot recover such damages elsewhere will seek to bring suit in those more hospitable forums. Indeed, some courts might read a denial of certiorari as a signal that this Court might tolerate other lower court decisions that ignore this Court's clear ERISA precedents. If the decision below is any indication, the Alabama Supreme Court stands ready to endorse the same broad and expansive extracontractual remedies under ERISA that it has become notorious for encouraging under its state common law tort system. Such a development would destroy the certainty and uniformity in the ERISA civil enforcement structure enacted by Congress.

CONCLUSION

For the reasons set forth in Jefferson-Pilot's petition for certiorari, the Alabama Supreme Court had no basis under § 502(e)(1) to exercise jurisdiction over plaintiffs' claims of breach of fiduciary duty and interference with ERISA-protected rights. Accordingly, the Court should grant certiorari on the first question presented and summarily reverse on jurisdictional grounds.

But in the event that the Court decides to address the merits of the decision below, the Court should make clear that courts in Alabama and elsewhere are not free to fashion federal common law remedies under ERISA that have no basis in the text of that statute or in Congressional intent. The Alabama Supreme Court's holding that plaintiffs may seek extracontractual damages under ERISA contradicts this Court's decisions in *Russell*, *Pilot Life*, and *Mertens*, manifestly frustrating the goal of Congress to contain the costs of funding and administering employee benefit plans under ERISA. Contradicting the precedents of this Court,

the decision below also creates needless confusion in an area of the law where certainty is needed and intended by Congress.

October 6, 1995

Respectfully submitted,

*WILLIAM J. KILBERG
PAUL BLANKENSTEIN
THEODORE J. BOUTROUS, JR.
JOHN K. BUSH
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Attorneys for Amici Curiae

**Counsel of Record*

Of Counsel:

PHILLIP E. STANO
AMERICAN COUNCIL OF LIFE INSURANCE
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

B. MICHAEL HERMAN
HEALTH INSURANCE ASSOCIATION OF AMERICA
555 13th Street, N.W.
Washington, D.C. 20004

ROBERT J. STILLMAN
AETNA
151 Farmington Avenue
Hartford, Connecticut 06156

JOSEPHINE A. MARCHETTI
CIGNA CORPORATION
900 Cottage Grove Road, W-26
Hartford, Connecticut 06152

PATRICIA A. MCEVOY
METRAHEALTH INSURANCE COMPANY
450 Columbus Boulevard
5 North Building
Hartford, Connecticut 06183

BRIAN HARMS
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
751 Broad Street
23 Plaza
Newark, New Jersey 07102

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Supreme Court of the United States

October Term, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,

Petitioner,

v.

WILLARD WEEMS AND JULIA WEEMS,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Alabama

BRIEF AMICI CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL ASSOCIATION OF MANUFACTURERS, THE ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS, AND THE ERISA INDUSTRY COMMITTEE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Of Counsel:
STEPHEN A. BOKAT
ROBIN S. CONRAD
MONA C. ZEIBERG
NATIONAL CHAMBER LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

CAROL CONNOR FLOWE*
E. CALVIN GOLUMBIC
ARENT FOX KINTNER PLOTKIN & KAHN
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 857-6054

Counsel for Amici Curiae

*Counsel of Record

(Additional Counsel Listed On Inside Cover)

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

Jan S. Amundson
Quentin Riegel
National Association of
Manufacturers
1331 Pennsylvania Avenue, N.W.
Suite 1500 – North Lobby
Washington, D.C. 20004
(202) 637-3000

James A. Klein
Association of Private
Pension and Welfare Plans
1212 New York Avenue, N.W.
Suite 1250
Washington, D.C. 20005
(202) 289-6700

Mark J. Ugoretz
The ERISA Industry
Committee
1400 L Street
Suite 350
Washington, D.C. 20005
(202) 789-1400

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the largest federation of business companies and associations in the world. With substantial membership in each of the 50 states, the Chamber represents nearly 215,000 businesses and professional organizations and serves as the principal voice of the American business community. Over 6500 of those members are located in Alabama, and many more do business in Alabama.

An important function of the Chamber is to represent the interests of its members in important matters before this Court, the lower courts, the United States Congress, the Executive Branch, and independent regulatory agencies of the federal government. The Chamber has sought to advance those interests in this Court by filing briefs *amicus curiae* in cases of importance to the business community.[2]

The National Association of Manufacturers ("the NAM") is the nation's oldest and largest broad-based industrial trade association. Its nearly 13,500 member companies and their subsidiaries employ approximately

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[1] This brief is being filed with the written consent of the parties pursuant to Rule 37.2. Letters of consent are being filed simultaneously with the Clerk of the Court.

[2] *See, e.g., Varity Corp. v. Howe*, 115 S. Ct. 1792 (1995); *Curtiss-Wright Corp. v. Schoonejongen*, 115 S. Ct. 1223 (1995); *District of Columbia v. The Greater Washington Bd. of Trade*, 113 S. Ct. 580 (1992); *Patterson v. Shumate*, 113 S. Ct. 13 (1992); *Ingersoll-Rand v. McClendon*, 498 U.S. 133 (1990); *FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

85% of all manufacturing workers and produce over 80% of the nation's manufactured goods. More than 158,000 additional businesses are affiliated with the NAM through its Associations Council and National Industrial Council. Like the Chamber, the NAM seeks to further the interests of its members by, *inter alia*, filing briefs *amicus curiae* in this Court.[3]

The Association of Private Pension and Welfare Plans ("the APPWP") is a broad-based, non-profit trade association founded in 1967 to protect and foster the growth of the Nation's private employer-sponsored employee benefit plan system. The members of the APPWP include both small and large employer sponsors (including many Fortune 500 companies) of employee benefits plans, as well as numerous plan support organizations, such as consulting and actuarial firms, investment firms, banks, insurers and other professional benefit organizations. This broad-based membership provides the APPWP with substantial expertise and experience in the entire spectrum of issues relating to all types of benefit plans.

The ERISA Industry Committee ("ERIC") is a non-profit association committed to the advancement of employee retirement, health, and welfare benefit plans of the Nation's largest employers. All of ERIC's members do business in more than one state, and many have employees in all fifty states. The association has a strong interest in matters affecting its members' ability to deliver benefits, their cost and effectiveness, as well as

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[3] *See, e.g., Livadas v. Bradshaw*, 114 S. Ct. 2068 (1994); *Willmar Elec. Service, Inc. v. NLRB*, 113 U.S. 1252 (1993); *National Posters, Inc. v. NLRB*, 494 U.S. 1026 (1990).

the role of those benefits in the Nation's economy. Both ERIC and APPWP have filed *amicus curiae* briefs in numerous cases involving important issues for the employee benefit plan community.

Members of the Chamber, the NAM, the APPWP and ERIC have a vital interest in the proper interpretation and application of the Employee Retirement Income Security Act of 1974 ("ERISA"), because they collectively sponsor hundreds of thousands of employee pension and welfare benefit plans covered by ERISA. In particular, they have a substantial interest in ensuring that the statute is interpreted and applied in a uniform and consistent manner across the nation, because many of these plans cover participants and beneficiaries in multiple states.

The decision below, which holds that state courts may establish federal common law under ERISA, and holds further, contrary to the vast majority of federal courts, that ERISA authorizes extracontractual damages and jury trials, could result in varied interpretations of ERISA and inconsistent decisions thereunder. This is of enormous concern to the companies who sponsor employee benefit plans. Indeed, it is of particular concern to the thousands of Chamber, NAM, APPWP and ERIC members in Alabama, the many other members who sponsor plans covering participants in Alabama, and the members who are providing fiduciary services to plans in Alabama, all of whom may now be subject to different obligations and remedies under ERISA, depending on whether they are sued in state or federal court.

ARGUMENT

The Petition Should be Granted to Eliminate the Real and Potential Conflicts in Substantive Law under ERISA Created by the Decision of the Alabama Supreme Court

Just last term, the Court reiterated "Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern.' " *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1677 (1995) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). As the Court explained:

> Congress intended "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction."

Id. (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 141 (1990)).

Completely disregarding these principles, the Alabama Supreme Court held that state courts may establish federal common law under ERISA, even if the law they establish is inconsistent with the law established by the federal courts. Pet. App. 16a.[4] The court further held that

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[4] References to "Pet. App." are to pages in the appendix to the Petition.

extracontractual damages and jury trials are available in actions alleging violations of ERISA §§ 409 and 510, 29 U.S.C. §§ 1109 and 1140, contrary to most of the federal courts that have addressed these issues. *Id.* at 17a, 19a. If allowed to stand, this decision will have significant adverse implications for Alabama plan sponsors and fiduciaries, who may be subject to different obligations and remedies depending on whether they are sued in state or federal court. The decision is, moreover, of concern to all plan sponsors and fiduciaries; if the Alabama courts are permitted to establish their own federal common law under ERISA, the courts of other states may well follow suit. Such a result would wholly undermine the intent of Congress as expressed in both ERISA and its legislative history.

According to one of its sponsors, ERISA's "crowning achievement" was the "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans." 120 Cong. Rec. 29197 (1974) (statement of Representative Dent). Other sponsors echoed these sentiments. 120 Cong. Rec. 29933, 29942 (1974) (statements of Senators Williams and Javits). But one need not rely on the legislative history to ascertain Congress's intent in this regard; it is abundantly clear from ERISA itself, particularly its preemption and enforcement provisions.

In section 514 of ERISA, Congress provided, with certain narrow exceptions, that the provisions of Titles I and IV of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . . " ERISA § 514(a), 29 U.S.C. § 1144(a). As this Court has said, "[t]he pre-emption

clause is conspicuous for its breadth." *FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990). It "displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985).

Congress's intent in this regard is also apparent from ERISA's "carefully integrated" civil enforcement provisions,[5] which provide for exclusive federal jurisdiction over all actions arising under Title I of ERISA. ERISA § 502(e), 29 U.S.C. § 1132(e). The only exception is for actions by a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). State courts have concurrent jurisdiction over actions under this subsection. ERISA § 502(e), 29 U.S.C. § 1132(e). Significantly, each of the actions described in subsection 502(a)(1)(B) is an action that can be resolved by reference to plan terms; these actions are permitted to be brought in state courts of competent jurisdiction because these actions "do not involve application of the title I provisions." H.R. Conf. Rep. No. 1280, 327 (1974).[6]

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[5] *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985).

[6] The language of sections 502(a) and (e) makes clear that the court below lacked jurisdiction over the Weems's action, which seeks damages for alleged violations of ERISA §§ 409 and 510, 29 U.S.C. §§ 1109 and 1140. Subsections 502(a)(2) and (3) are the enforcement mechanisms for violations of sections 409 and 510, but state courts have concurrent jurisdiction only for actions under subsection 502(a)(1)(B). *See* Petition at 9-11.

By granting jurisdiction solely to federal courts over actions involving the interpretation and application of the statute, Congress made clear its intent that all regulation of employee benefit plans was to take place in the federal sphere. As one commentator aptly put it:

> The relevance of the exclusive jurisdiction provision becomes apparent when coupled with section 514(a)'s expansive preemption provision. Together, the provisions display a clear statutory scheme constructed for the purpose of "federalizing" the law governing employee benefit plans.

Richard Rouco, *Available Remedies Under ERISA Section 502(a)*, 45 Ala. L. Rev. 631, 645-46 (1994). In fact, "Congress's expressed intent that federal courts develop a federal common law to aid interpretation of ERISA suggests a corollary congressional intent to establish complete federal occupation in the area of employee benefits." *Id.* at 646 (footnote omitted).

As the Court explained in *Ingersoll-Rand*, which involved application of ERISA's preemption clause, allowing both state and federal law to govern employee benefit plans would be unworkable:

> Particularly disruptive is the potential for conflict in substantive law. It is foreseeable that state courts, exercising their common law powers, might develop different substantive standards applicable to the same employer conduct. . . . Such an outcome is fundamentally at odds with the goal of uniformity that Congress sought to implement.

498 U.S. at 142.

The decision below creates precisely the "potential for conflict in substantive law" identified by the Court in *Ingersoll-Rand*. After erroneously holding that state courts have the authority to create federal common law under ERISA, the Alabama Supreme Court compounded its error by reaching a conclusion that is wholly inconsistent with the views of most of the federal courts, including the Court of Appeals for the Eleventh Circuit, within which the Alabama court sits. And ironically, the lower court reached this result by purporting to interpret a passage from *Ingersoll-Rand*.

In *Ingersoll-Rand*, the issue before the Court was whether ERISA preempted a participant's claim under Texas law that his employer discharged him to avoid contributing to his pension fund. 498 U.S. at 135-36. Noting that the Texas cause of action "purports to provide a remedy for the violation of a right expressly guaranteed by § 510 and exclusively enforced by § 502(a)," the Court held that " 'due regard for the federal enactment requires that state jurisdiction must yield.' " *Id.* at 145 (quoting *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409 n.8 (1988)).

Because the plaintiff in *Ingersoll-Rand* was seeking compensatory and punitive damages rather than lost pension benefits, the Texas Supreme Court had concluded the action was not within ERISA's purview. *Id.* at 136 (citing *McClendon v. Ingersoll-Rand Co.*, 779 S.W.2d 69, 71 (Tex. 1989)). At the conclusion of her opinion for the majority, Justice O'Connor responded to this point. After noting that "there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek 'pension benefits,' " she added, in a sentence that the court below

misconstrued, "[i]t is clear that the relief requested here is well within the power of federal courts to provide." *Id.* at 145.[7]

A few courts, like the court below, have interpreted this passage to mean that compensatory and punitive damages are available to participant-plaintiffs under ERISA § 502(a), and that, accordingly, trial by jury is also available under that provision. *See, e.g., McDonald v. Artcraft Elec. Supply Co.*, 774 F. Supp. 29, 33-34 (D.D.C. 1991); *UAW v. Midland Steel Prods. Co.*, 771 F. Supp. 860, 863-64 (N.D. Ohio 1991); *Blue Cross and Blue Shield of Alabama v. Lewis*, 753 F. Supp. 345, 346 (N.D. Ala. 1990). A large majority of the federal courts have rejected that interpretation, however, refusing "to believe that the Court intended to overrule settled law in most of the circuits, as well as narrowly limit – if not overrule – its own decision in [*Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985)] in such an off-hand manner." *Harsch v. Eisenberg*, 956 F.2d 651, 660 (7th Cir.), *cert. denied*, 113 S. Ct. 61 (1992). *See also id.* at 657-60 (collecting cases); Denise Clemow and Lisa Lattan, *ERISA Section 510 Claims: No Right to a Jury Trial Can Be Found*, 73 Neb. L. Rev. 756, 777-78 nn.169, 170 (1994) (collecting cases).

In *Russell*, of course, the Court held that a participant may not recover extracontractual damages under ERISA § 409 for a breach of fiduciary duty. 473 U.S. at 142. And while the Court expressly reserved judgment in *Russell* as to the availability of extracontractual damages under

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[7] Thus, for example, a court can order various types of equitable relief, including, on facts like those in *Ingersoll-Rand*, reinstatement and/or restitution.

ERISA § 502(a)(3), *id.* at 139 n.5, the question was resolved in *Mertens v. Hewitt Assoc.*, 113 S. Ct. 2063 (1993), which held that only traditional equitable relief is available under ERISA § 502(a)(3). *See Spinelli v. Gaughan*, 12 F.3d 853, 857 n.3 (9th Cir. 1993) (language in *Ingersoll-Rand* which "could possibly have been read as allowing federal courts to award compensatory and punitive damages under section 502(a)(3)" must be deemed "superseded by *Mertens*").

The court below nevertheless concluded that extra-contractual damages and jury trials are authorized under ERISA, and that it was free to disregard the contrary views of the federal courts, including the Court of Appeals for the Eleventh Circuit. *See, e.g., McRae v. Seafarers' Welfare Plan*, 920 F.2d 819, 820 (11th Cir. 1991) ("[t]he weight of authority in both the Eleventh Circuit and other courts indicates that extra-contractual damages are not available as a form of relief under ERISA § 502(a)(3)"). By so concluding, the court has created for Alabama employers and fiduciaries not merely the "potential for conflict in substantive law," but an *actual* conflict of just the sort Congress endeavored so mightily to avoid.

The potential adverse impact of this conflict on fiduciaries and employers is self-evident. Less apparent, but no less real, is the potential adverse impact on plan participants. The "uniformity of decision" that ERISA was designed to foster, 120 Cong. Rec. 29933 (1974) (statement of Sen. Williams), was part of Congress's effort to balance participant protections against the burdens imposed on employers. *See, e.g., Mertens*, 113 S. Ct. at 2071; *Ingersoll-Rand*, 498 U.S. at 144; *Pilot Life Ins. Co. v.*

Dedeaux, 481 U.S. 41, 54 (1987); *Russell*, 473 U.S. at 148 n.17; *Alessi*, 451 U.S. at 515. Congress was concerned that if those burdens were too great, ERISA would "force employers to end their plans or perhaps discourage other employers from beginning them," 120 Cong. Rec. 29209 (1974) (statement of Rep. Collier), contrary to ERISA's fundamental goal of "promot[ing] the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). *See also* S. Rep. No. 127, 93d Cong., 1st Sess. 1 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838 (discussing purposes of ERISA, including controlling costs associated with management of employee benefit plans).

As the Court recently noted, ERISA is "an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests – not all in favor of [participants]." *Mertens*, 113 S. Ct. at 2071. Congress recognized that maintaining an employee benefit plan involves a significant commitment, and that the most efficient way to meet that commitment "is to establish a uniform [benefit] scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987). If, however, an employer is subject to conflicting law, depending on whether suit is brought in state or federal court, differing benefit practices and administrative procedures might be required. "Faced with the difficulty or impossibility of structuring administrative practices according to a set of uniform guidelines, an employer may decide to reduce benefits or simply not pay them at all." *Id.* at 13 (footnote omitted). ERISA's comprehensive "federalization" of employee

benefits, ignored by the court below, was aimed at minimizing this risk.

To be sure, the conflict at issue here involves only additional damages for alleged violations of existing statutory provisions; i.e., the "federal common law" created by the Alabama Supreme Court in this case will not necessarily alter the design or administration of employee benefits plans. But the decision nevertheless implicates the concerns expressed by Congress and the prior decisions of this Court. It is indisputable that the decision below will increase the cost of providing employee benefits; few plaintiffs will bring suit in federal court if they think they may be able to win extracontractual damages from a sympathetic jury in a state court. To offset these additional costs, employers may choose to reduce or discontinue their benefit plans, contrary to Congress's goal, in enacting ERISA, "to improve and encourage the expansion of private [benefit] plans." 120 Cong. Rec. 29928 (1974), 3 Leg. Hist. 4732 (quoted in *Alessi*, 451 U.S. at 516 n.12).[8]

Furthermore, while this decision itself relates only to damages, it establishes a precedent – that state courts

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[8] *See also* 102 Cong. Rec. S15,762 (daily ed. Aug. 22, 1974) (statement of Senator Nelson):

> [Cost is] an important factor in determining whether a pension plan will be adopted. Unduly large increases in cost can impede the progress of the private pension system. For this reason, . . . Congress tried to adopt provisions which strike a balance between providing a meaningful protection for the employees and keeping costs within reasonable limits for employers.

may establish federal common law under ERISA – that threatens to undermine totally the federal uniformity that Congress sought to ensure.[9] Employers may now be subject to suit in state courts across the nation. They will be subject to inconsistent decisions in these courts. And, of course, they may be subject to punitive and compensatory damages.

In *Shaw v. Delta Airlines*, 463 U.S. at 104, the Court observed that "Congress applied the principle of preemption 'in its broadest sense to foreclose *any* non-Federal regulation of employee benefit plans. . . . ' " (quoting 120 Cong. Rec. 29197) (emphasis added). As even the court below recognized, this means that state courts may not regulate employee benefit plans by applying state law. The result is no different, however, if state courts are permitted to create and apply their own federal common law under ERISA.

CONCLUSION

This Court has repeatedly upheld the balance that Congress sought to achieve in ERISA, by refusing to impose burdens on employers not contemplated by the statute, and by confirming the enormous importance of

[9] Tempting though it may be to dismiss the decision below as an aberration, this case marks the second occasion on which the Alabama Supreme Court has concluded that state courts may establish federal common law under ERISA, including allowing extracontractual damages and jury trials in actions under ERISA § 502(a). *See Haywood v. Russell Corp.*, 584 So. 2d 1291 (Ala. 1991).

uniform and consistent federal regulation of employee benefit plans. For the foregoing reasons, the time has come to do so again. The petition for certiorari should be granted and the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

Of Counsel:
STEPHEN A. BOKAT
ROBIN S. CONRAD
MONA C. ZEIBERG
NATIONAL CHAMBER LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

JAN S. AMUNDSON
QUENTIN RIEGEL
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Avenue, N.W.
Suite 1500 – North Lobby
Washington, D.C. 20004
(202) 637-3000

JAMES A. KLEIN
ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS
1212 New York Avenue, N.W.
Suite 1250
Washington, D.C. 20005
(202) 289-6700

CAROL CONNOR FLOWE*
E. CALVIN GOLUMBIC
ARENT FOX KINTNER PLOTKIN & KAHN
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 857-6054

Counsel for Amici Curiae

*Counsel of Record

MARK J. UGORETZ
THE ERISA INDUSTRY COMMITTEE
1400 L Street
Suite 350
Washington, D.C. 20005
(202) 789-1400

October 1995

OCT 5 1995

No. 95-209

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,
Petitioner,
v.
WILLARD WEEMS and JULIA WEEMS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE* OF THE BUSINESS COUNCIL OF ALABAMA IN SUPPORT OF PETITIONER

Of Counsel:
S. EASON BALCH, JR.
BALCH & BINGHAM
1901 6th Avenue North
Birmingham, Alabama 35201
Chairman,
Judiciary Committee
Business Council of Alabama

CLEOPHUS THOMAS, JR.
REID & THOMAS
Post Office Box 2303
Anniston, Alabama 36202
Chairman,
Amicus Curiae Committee
Business Council of Alabama

FORREST S. LATTA
JAMES W. LAMPKIN II *
PIERCE, CARR, ALFORD,
LEDYARD & LATTA, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(334) 344-5151
Counsel for Amicus Curiae

October 5, 1995

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Business Counsel of Alabama hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

The interest of the Business Counsel of Alabama in this case arises from the fact that it is a non-profit association whose members sponsor "employee welfare benefit plans" and "employee pension benefit plans." The conflict created between state court proceedings and federal court proceedings by the Alabama Supreme Court's decision affects *Amicus'* membership.

In the instant case in the Alabama Supreme Court, without jurisdiction, held that extracontractual and punitive damages are recoverable under ERISA and a right to jury trial exists under ERISA. This decision is in direct conflict with the decisions of this Court and the Eleventh Circuit.

Respectfully submitted,

Of Counsel:
S. EASON BALCH, JR.
BALCH & BINGHAM
1901 6th Avenue North
Birmingham, Alabama 35201
Chairman,
Judiciary Committee
Business Council of Alabama

CLEOPHUS THOMAS, JR.
REID & THOMAS
Post Office Box 2303
Anniston, Alabama 36202
Chairman,
Amicus Curiae Committee
Business Council of Alabama

FORREST S. LATTA
JAMES W. LAMPKIN II *
PIERCE, CARR, ALFORD,
LEDYARD & LATTA, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(334) 344-5151
Counsel for Amicus Curiae

October 5, 1995

* Counsel of Record

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---

BRIEF OF THE BUSINESS COUNCIL OF ALABAMA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICUS*[1]

The Business Council of Alabama ("*Amicus*"), is a non-profit association. Its membership consists of over 4,000 businesses of all sizes and descriptions which are the source of employment for thousands of Alabama citizens. Many of its members sponsor "employee welfare benefits plans" and "employee pension benefit plans."

Amicus therefore is vitally interested in issues involving employee benefits. It is particularly concerned by the conflict that exists between Alabama state courts and the federal courts by virtue of the Alabama Supreme Court's

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[1] The Petitioner's letter of consent to the filing of this brief has been filed with the Clerk of the Court. The Respondents' counsel refused to consent to the filing of this brief. Accordingly, Amicus has filed a motion for leave to file this brief with the Clerk of the Court.

holding in the case below that Congress intended to authorize jury trials and punitive damages in cases brought under the Employee Retirement Income Security Act ("ERISA") of 1974. Such a holding clearly conflicts with controlling federal authority which governs the decision of such cases in federal courts in this and other jurisdictions.[2] Furthermore, the reasoning of the Alabama Supreme Court is such that Petitioner and Amicus can no longer rely on any ERISA provision or federal court decision interpreting ERISA in the administration of their plans insofar as those plans involve an Alabama resident.

Amicus therefore urges the Court to grant certiorari to review and resolve the conflict over whether Congress intended to authorize state court jury trials, and the imposition of extra-contractual and punitive damages, in ERISA cases.

REASONS FOR GRANTING THE WRIT

At its core, this case is about whether ERISA permits jury awards of punitive and other extra-contractual damages in state courts. The Alabama court in this case, notwithstanding clear and controlling federal case law to the contrary, has authorized the imposition of punitive damages by juries in cases that involve claims which 'relate to' ERISA plans.

It is difficult to conceive of a clearer conflict between Alabama state court and federal court case authority, on a subject of broader public importance, than is presented by the question in this case. The goal of nationwide uniformity intended by Congress under ERISA is sharply undermined where the available remedies differ according to where the case is decided, even within the same state's

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[2] Under the plain language of ERISA, the Alabama Supreme Court lacked subject matter jurisdiction over the breach of fiduciary duty claim and the interference with rights claim. *See* 29 U.S.C. § 1132(e)(1). The Petition masterfully addresses the jurisdiction issue and, therefore, *Amicus* will focus on other issues.

boundaries. Such a conflict is especially vexatious to employers doing business on a national basis who thereby are exposed to different rules of liability in employee benefit cases depending, literally, upon the address of the courthouse. Allowing the Alabama Supreme Court's decision to stand unchallenged has the foreseeable potential of adversely effecting the welfare and security of thousands of Alabamians.

The question presented in this case is vitally important standing alone. It is doubly compelling when seen against the backdrop of other Alabama state court decisions which have sought to emasculate federal and state attempts to regulate the imposition of punitive damages in state courts. The conflict presented in this case will continue to exist in Alabama until, and unless, this Court clarifies whether the decision below is in conformity with ERISA's statutory scheme as construed by this and other federal and state courts.

I. THE ALABAMA SUPREME COURT HAS DEMONSTRATED AN AVERSION TO STATE OR FEDERAL LEGISLATION WHICH LIMITS THE AWARD OF PUNITIVE DAMAGES BY JURIES.

The decision below is an excellent example of the Alabama Supreme Court's predisposition to avoid application of federal or state laws that would restrict claims for punitive and other extra-contractual damages in jury trials. This Court, in a series of cases dating back ten years, is again being called upon to intervene in an Alabama case to uphold federal constitutional and statutory guaranties which have been rejected by the Alabama court.

For example, until recently the Alabama court refused to give effect to the Federal Arbitration Act ("FAA")[3] by reasoning that parties to a written contract did not, at the time it was executed, "contemplate" substantial interstate activity. *See Allied-Bruce Terminix Cos. v. Dobson*, 628 So. 2d 354 (Ala. 1993), *rev'd*, —— U.S. ——,

[3] 9 U.S.C. § 1 *et seq.*

115 S. Ct. 834, 130 L.Ed. 2d 753 (1995). Alabama litigants, unable to enforce arbitration agreements, thus were required to engage in often lengthy and expensive pre-trial discovery and jury trials that would not have been required in other state or federal court jurisdictions which gave effect to the FAA. This Court resolved the resulting conflict by vacating the Alabama court's judgment and holding that the FAA must likewise be enforced in Alabama state courts. *See Allied-Bruce Terminix Cos. v. Dobson,* —— U.S. ——, 115 S. Ct. 834, 130 L.Ed. 2d 753 (1995).

This Court is currently reviewing the constitutionality of a $4 million punitive damage award (remitted to $2 million) in another Alabama punitive damages case where the actual damages were only $4,000. *BMW of North America, Inc. v. Gore,* —— So. 2d —— (Ala. 1994), *cert. granted,* U.S. Supreme Court No. 94-896. In that case the Alabama court upheld a jury verdict despite its own conclusion that the award was tainted by the admission into evidence of extra-territorial actions which were not illegal in those jurisdictions. The affirmance of the judgment in such a disproportionate amount is traceable back to the Alabama court's philosophy, contrary to *Pacific Mutual Life Insurance Co. v. Haslip,* 499 U.S. 1 (1991), that punitive damage awards need not bear a rational relationship to the compensatory damages. Indeed the Alabama court holds that, "[i]mposing . . . a relationship [between compensatory and punitive damages] would inevitably result in *injustice* and we decline to impose it. *Southern Life & Health Ins. Co. v. Turner,* 586 So. 2d 854, 858 (Ala. 1991).

Despite suggestions by members of this Court that state legislatures have the power to limit punitive damages,[4]

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[4] *See Pacific Mutual Ins. Co. v. Haslip,* 499 U.S. at 39 (Scalia, J., concurring specially) & at 57 (O'Connor, J., dissenting), wherein Justices Scalia and O'Connor each observed that state legislatures have the power to limit punitive damages awards.

the Alabama court has steadfastly held otherwise. On the day this Court announced its punitive damages decision in *TXO Production Corp. v. Alliance Resources, Inc.*, —— U.S. ——, 113 S. Ct. 2711, 125 L.Ed.2d 366 (1993), the Alabama court struck down legislation which imposed a flexible limit on punitive damages. It declared, in *Henderson v. Alabama Power Co.*, 627 So. 2d 878 (Ala. 1993), that the Alabama Constitution forbade legislative limits upon punitive damages in any manner. Such holding is difficult to reconcile with this Court's statement in *Honda Motor Co. v. Oberg*, —— U.S. ——, 114 S. Ct. 2331, 129 L.Ed.2d 336 (1994), that *Haslip* and *TXO* "established that States [whether by constitution or state courts] cannot abolish limits on the award of punitive damages." *Oberg*, —— U.S. at ——, 114 S. Ct. at 2340 n.9. Yet the Alabama court continues to insist that its state constitution does exactly that. As recently as August, 1995, the Alabama Supreme Court struck down another such legislative provision, limiting punitive damages, as being forbidden by Alabama's constitution. *See Smith v. Schulte*, —— So. 2d ——, 1995 WL 491245 (Ala. 1995).

As a final example, the Court will recall that almost ten years ago in *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986), it vacated a $3.5 million punitive damages award which the Alabama court had affirmed despite the fact that one of the Alabama court's judges, who voted in the case, had a financial interest in the outcome. The disqualified judge was himself a plaintiff in a similar separate case and, thus, benefitted from the state court's judgment affirming the punitive damages award for bad faith. Until this Court intervened, and unanimously vacated the award, the Alabama court had adamantly held that no due process violation resulted from the participation of the financially interested judge.

As seen against the background of these cases, the Alabama court's decision below is not an aberration but

rather, typical of that court's "unprecedented disdain for" any statutory scheme which would restrict or regulate the traditional common law right to recover unlimited punitive damages in jury trials.

II. THE ALABAMA SUPREME COURT LIKEWISE HAS REJECTED CONTROLLING FEDERAL PRECEDENT ON THE ISSUE OF ERISA PREEMPTION OF STATE COMMON LAW CLAIMS FOR PUNITIVE DAMAGES.

In the case below, the Alabama Supreme Court has authorized the recovery of punitive damages, as well as the right to jury trial, in ERISA cases despite controlling federal authority that ERISA affords no such rights.[5]

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[5] The Eleventh Circuit has clearly held that extracontractual damages are not available under ERISA. *See*, e.g., *McRae v. Seafarer's Welfare Plan*, 920 F.2d 1499 (11th Cir. 1988). It also holds that ERISA does not afford a plaintiff the right to a jury trial. *See*, e.g., *Blake v. Union Mutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990). The Fifth, Seventh and Tenth Circuits have joined the Eleventh Circuit in holding that *Ingersoll-Rand* did not authorize the recovery of extracontractual or punitive damages under ERISA. *See Lafoy v. HMO Colorado*, 988 F.2d 97 (10th Cir. 1993); *Medina v. Anthem Life Ins. Co.*, 983 F.2d 29 (5th Cir.), *cert. denied*, —— U.S. ——, 114 S. Ct. 66, 126 L.Ed.2d 35 (1993) and *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, —— U.S. ——, 113 S. Ct. 61, 121 L.Ed.2d 29 (1992).

The First, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits likewise hold that extracontractual and/or punitive damages are not recoverable. *See, e.g., Drinkwater v. Metropolitan Life Ins. Co.*, 846 F.2d 821 (1st Cir.), *cert. denied*, 488 U.S. 909 (1988); *Powell v. Chesapeake & Potomac Tel. Co.*, 780 F.2d 419 (4th Cir. 1985), *cert. denied*, 476 U.S. 1170 (1986); *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enterprises, Inc.*, 793 F.2d 1456 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987); *Varhola v. Doe*, 820 F.2d 809 (6th Cir. 1987); *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, —— U.S. ——, 113 S. Ct. 61, 121 L.Ed.2d 29 (1992); and *Sokol v. Bernstein*, 803 F.2d 532 (9th Cir. 1986).

As early as 1989, the Alabama court declined to follow this Court's holding in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), that state common law claims of fraudulent inducement and bad faith were preempted where such claims "relate[d] to" an ERISA plan. *See Healthamerica v. Menton*, 551 So. 2d 235 (Ala. 1989), *cert. denied*, 493 U.S. 1093 (1990); *Harbor Ins., Co. v. Blackwelder*, 554 So. 2d 329 (Ala. 1989) *cert denied*, 495 U.S. 948 (1990).

Even after this Court expounded upon the broad scope of ERISA's preemptive provisions, in *District of Columbia v. Greater Washington Board of Trade*, —— U.S. ——, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992), the Alabama court still refused to recognize that claims for fraud in the inducement were preempted where such claims related to an ERISA plan. See *Ingram v. American Chambers Life Ins. Co.*, 643 So. 2d 575 (Ala. 1994). In *Ingram* the Alabama court openly acknowledged that its previous decisions rejecting ERISA preemption in *Menton* "came after, and *despite*, the Supreme Court's decision in *Pilot Life*." *Ingram*, 643 So. 2d at 577 (emphasis added). The state court in *Ingram* further rejected the notion that contrary decisions of the Eleventh Circuit Court of Appeals should be given any controlling effect.

III. ALLOWING THE ALABAMA SUPREME COURT'S PUNITIVE DAMAGES RULING TO STAND UNCHALLENGED HAS THE FORESEEABLE IMPACT OF ADVERSELY AFFECTING THE WELFARE AND SECURITY OF THOUSANDS OF WORKING MEN AND WOMEN IN THE STATE OF ALABAMA.

The Alabama Supreme Court's decision severs the thin hair suspending the Damocles sword over the heads of current employee participants in welfare benefit plans in the State of Alabama. Multi-million dollar punitive damage verdicts in Alabama have caused insurance companies to cease selling new business in the State of Alabama,

whether publicly announced or silently undertaken. As a result of this decision, it is clearly foreseeable that Alabama employers will likewise discontinue and terminate employee benefit plans rather than face out-of-control punitive damage verdicts depriving thousands of Alabamians of the benefits offered by those plans. Likewise, it can be expected that insurance companies will cease offering their products to fund employee benefit plans rather than face the risk of punitive damages. As recognized by Congress in its Findings and Declarations of policy:

> [T]he continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained. . . .

29 U.S.C. § 1001.

In its zeal to convey to all plaintiffs, and their attorneys, the unfettered right to keep whatever they can sell an Alabama jury to award, the Alabama Supreme Court has disrupted the balance of ERISA rights and remedies which has existed for over 20 years.

The case at bar is an example of the Alabama court's adamant refusal to enforce Congress' intent as expressed in ERISA, and declared by the federal courts, where the statute is held to prohibit the award of extra-contractual and punitive damages. Such conflict serves only to undermine the very evil Congress sought to resolve by its enactment of ERISA in 1974.

Amicus urges the Court to quickly and decisively answer this issue so that the welfare of thousands of Alabamians will not be adversely impacted by this obviously incorrect ruling.

CONCLUSION

Amicus urges the the Court to grant certiorari in this case to clarify that ERISA does not authorize jury trials or the recovery of extracontractual and punitive damages in state or federal courts.

Respectfully submitted,

FORREST S. LATTA
JAMES W. LAMPKIN II *
PIERCE, CARR, ALFORD,
LEDYARD & LATTA, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(334) 344-5151
Counsel for Amicus Curiae

Of Counsel:
S. EASON BALCH, JR.
BALCH & BINGHAM
1901 6th Avenue North
Birmingham, Alabama 35201
Chairman,
Judiciary Committee
Business Council of Alabama

CLEOPHUS THOMAS, JR.
REID & THOMAS
Post Office Box 2303
Anniston, Alabama 36202
Chairman,
Amicus Curiae Committee
Business Council of Alabama

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* Counsel of Record

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,
Petitioner,

v.

WILLARD WEEMS and JULIA WEEMS,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

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REPLY TO BRIEF IN OPPOSITION

JOHN E. NOLAN
Counsel of Record
PAUL J. ONDRASIK, JR.
SARA E. HAUPTFUEHRER
STEPTOE & JOHNSON
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for Jefferson-Pilot Life Insurance Company, Inc.

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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REPLY TO BRIEF IN OPPOSITION

The Petition demonstrates that the Alabama Supreme Court overstepped its jurisdiction and reached conclusions that are indefensible as a matter of federal law in determining that Respondents are entitled to recover compensatory and punitive damages and to have their claims tried by a jury. In opposition, Respondents assert that the case is not "ripe" for review by this Court, that state courts have jurisdiction over the claims involved, that state and federal courts may award compensatory and punitive damages in the circumstances of this case, and that Respondents are entitled to trial by jury. None of these assertions has merit.

Certiorari should be granted and the decision below summarily reversed or, as Respondents acknowledge, this case should be held and disposed of in light of this Court's holding in *Varity Corp. v. Howe*, No. 94-1471 (U.S. *cert. granted* Apr. 24, 1995).

ARGUMENT

I

Respondents' argument that the case is not ripe for review lacks merit. While Respondents note that further proceedings might result in a judgment in Jefferson Pilot's favor (Brief in Opposition ("Opp.") at 6), that possible result is precisely why the decision of the Alabama Supreme Court should be reviewed at this stage. If Jefferson Pilot were to prevail on remand, the decision below—which presents important issues of federal law—would escape review altogether. As the Court has recognized, in this situation "a refusal immediately to review the state court decision might seriously erode federal policy." Thus, immediate review is appropriate. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 483 (1975); *accord Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 54-55 (1989); *ASARCO Inc. v. Kadish*, 490 U.S. 605, 611-12 (1989); *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178-79 (1988).

Prompt review of state court judgments is particularly appropriate where, as here, the very *jurisdiction* of the state tribunal is at issue. Thus, in *Construction Laborers v. Curry*, 371 U.S. 542 (1963), the state court had preliminarily enjoined a labor dispute that, petitioner argued and the Court agreed, was within the exclusive jurisdiction of the National Labor Relations Board ("NLRB"). As the Court noted:

> What we . . . have here is a judgment of the Georgia court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power

> and instead is within the exclusive domain of the NLRB.

371 U.S. at 548. So too in this case, the Alabama court is "finally and erroneously asserting its jurisdiction" over a matter that is "within the exclusive domain" of the federal courts. No one's interest would be served by participating in a jury trial where the court lacks jurisdiction.

II

The Petition parsed ERISA's provisions relating to jurisdiction and demonstrated that Respondents' claims are within the exclusive jurisdiction of the federal courts. Petition at 9-11. Respondents' Brief in Opposition merely cites § 502(a)(1)(B) of ERISA for the general proposition that "the Alabama Supreme Court, as a state court, does have concurrent subject matter jurisdiction of ERISA claims." Opp. at 7. There is no dispute that state courts have concurrent jurisdiction over § 502(a)(1)(B) claims, but that does not authorize such courts to assert jurisdiction over other ERISA claims. *See* 29 U.S.C. § 1132(e)(1).

In any event, *this* action is not cognizable under § 502(a)(1)(B); it does not involve interpretation of plan terms to determine benefits due thereunder. By their own characterization, Respondents' claims are for alleged breach of fiduciary duty and interference with ERISA-protected rights, neither of which can be asserted under § 502(a)(1)(B). *See* Opp. at 1. Rather, Respondents' claims may be brought, if at all, only under § 502(a)(3) and are thus within the exclusive jurisdiction of the federal courts. Respondents cannot, simply by invoking § 502(a)(1)(B), unilaterally bestow upon the state courts jurisdiction that Congress deliberately withheld.[1]

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[1] Respondents suggest that if the Alabama courts lacked jurisdiction over the ERISA claims, they were equally incompetent to rule that Respondents' state law claims were preempted. *See* Opp. at 7. This is clearly wrong. The assertion of state law claims in the

Nor, as Respondents suggest (Opp. at 7), can the state courts nullify Congress's grant of exclusive federal jurisdiction through the exercise of "pendent" or "ancillary" jurisdiction.[2]

III

The Petition summarizes this Court's jurisprudence relating to the civil enforcement provisions of ERISA. *See* Petition at 11-15. Those cases—*Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985), *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), and *Mertens v. Hewitt Associates*, 113 S. Ct. 2063 (1993)—confirm that Respondents are not entitled to recover compensatory or punitive damages in this case. Against this consistent line of authority, Respondents raise only two district court decisions and a statement in a 1988 committee report (Opp. at 8-9), none of which raises a serious challenge to this Court's interpretation of ERISA.

The two district court cases—*East v. Long*, 785 F. Supp. 941 (N.D. Ala. 1992), and *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Midland Steel Products*, 771 F. Supp. 860 (N.D. Ohio 1991)—were wrong when they were decided. They, like the decision of the Alabama Supreme Court below, misinterpreted *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), as effectively over-

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complaint gave the state court jurisdiction over those claims and allowed it to adjudicate the merits of Petitioner's preemption defense. Had the court held that such state claims were not preempted, its jurisdiction over them would have remained intact. Only upon ruling that the state claims were preempted did the state courts divest themselves of subject matter jurisdiction over the remaining exclusively federal claims. And, contrary to Respondents' implication, there is no bar to challenging a court's subject matter jurisdiction for the first time on appeal. *See* Petition at 5 n.4.

[2] Respondents cite Justice Shore's concurrence in *Ex Parte Gurganus*, 603 So. 2d 903 (Ala. 1993), but that opinion does not even mention pendent or ancillary jurisdiction.

ruling *Russell* and *Pilot Life*. *See* Petition at 13-14.[3] Even if there were some question about the continued viability of the *Russell/Pilot Life* principles when Respondents' cases were decided, which there was not, there certainly can be none today in light of *Mertens*.

Nor are the apparent views of a congressional committee in 1988 probative of the intent of Congress when ERISA was enacted in 1976.[4] This Court has recognized time and again that such post-enactment legislative history provides no insight into the intent of the enacting Congress. *E.g., Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) ("[s]ubsequent legislative history is a 'hazardous basis for inferring the intent of an earlier Congress' ") (citing *United States v. Price*, 361 U.S. 304, 313 (1960)); *accord Universities Research Ass'n v. Coutu*, 450 U.S. 754, 778 (1981). The intent of Congress in 1976—explored in *Russell* and *Pilot Life* —controls.[5]

IV

Respondents' assertion that § 502(a)(1)(B) claims are legal and thus carry the right to trial by jury (Opp. at 9) is both irrelevant and wrong. As noted above, this case does not involve a § 502(a)(1)(B) claim. *See also*

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[3] In fact, *East v. Long* did not hold that extracontractual damages are available in these circumstances. Indeed, any such holding was clearly foreclosed by the Eleventh Circuit's contrary ruling in *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991).

[4] Respondents' reliance on this authority is misplaced for another reason: The report states that *federal* courts are to develop federal common law. It says nothing about *state* court authority.

[5] Congress well knows how to express any dissatisfaction with ERISA's enforcement scheme—by amending the statute. Indeed, in recent years, three paragraphs have been added to § 502(a). *See* Pub. L. No. 103-66, § 4301(c)(1), 107 Stat. 376 (1993) (adding paragraphs (7) and (8)); Pub. L. No. 103-401, § 2, 108 Stat. 4172 (1994) (adding paragraph (9)); *see also* Pub. L. No. 101-239, § 2101(b), 103 Stat. 2123 (1989) (expanding the scope of § 502(a)(6)).

Petition at 9-11. Moreover, even if it did, the overwhelming weight of authority, including *every* court of appeals that has reached the issue, holds that jury trials are *not* available under § 503(a)(1)(B). *See id.* at 16 n.20. Finally, it is clear that the legal relief Respondents seek here—compensatory and punitive damages—is not available to them in connection with the claims they have asserted.[6]

CONCLUSION

For the reasons stated herein and in the Petition, certiorari should be granted and this case should be summarily reversed. At the very least, as Respondents themselves recognize, this case should be held and disposed of in light of this Court's decision in *Varity Corp. v. Howe*, No. 94-1471.

Respectfully submitted,

JOHN E. NOLAN
Counsel of Record
PAUL J. ONDRASIK, JR.
SARA E. HAUPTFUEHRER
STEPTOE & JOHNSON
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for Jefferson-Pilot Life Insurance Company, Inc.

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[6] The right to trial by jury guaranteed by the Alabama Constitution is no broader than it is under the Seventh Amendment. It too provides that "in those actions which are legal in nature as opposed to equitable, either party has a right to have its case heard and tried by a jury." Opp. at 9.